

No. 12158

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United States  
Court of Appeals

for the Ninth Circuit

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SUCKOW BORAX MINES CONSOLIDATED, INC., a corporation;  
MOJAVE BORAX COMPANY, LTD., a corporation; PAUL O.  
TOBELER, Executor of the Last Will and Testament of John K.  
Suckow, Deceased, and RUTH E. SUCKOW,

Appellants,

vs.

BORAX CONSOLIDATED, LTD, PACIFIC COAST BORAX COM-  
PANY, UNITED STATES BORAX COMPANY, AMERICAN  
POTASH & CHEMICAL CORPORATION, STAUFFER CHEMI-  
CAL COMPANY, WEST END CHEMICAL COMPANY, WEST-  
ERN BORAX COMPANY, LTD., GOLDFIELDS AMERICAN  
DEVELOPMENT COMPANY, PACIFIC ALKALI COMPANY,  
F. LESSER, JAMES M. GERSTLEY, FRANK M. JENIFER, P.  
C. BAKER, ALLEN W. ASHBURN, WALTER A. MOSES,  
BANK OF AMERICA NATIONAL TRUST AND SAVINGS AS-  
SOCIATION as Executor of the Last Will and Testament of  
Clarence McAnisse Rasor, deceased, BEN H. BROWN, as Special  
Administrator of the Estate of Victor C. Emden, deceased, et al.,

Appellees.

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Transcript of Record

In Two Volumes

VOLUME II.

(Pages 361 to 676, inclusive)

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Appeal from the United States District Court  
for the Northern District of California,  
Southern Division

**FILED**

APR 15 1949



No. 12158

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United States  
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for the Ninth Circuit

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SUCKOW BORAX MINES CONSOLIDATED, INC., a corporation;  
MOJAVE BORAX COMPANY, LTD., a corporation; PAUL O.  
TOBELER, Executor of the Last Will and Testament of John K.  
Suckow, Deceased, and RUTH E. SUCKOW,

Appellants,

vs.

BORAX CONSOLIDATED, LTD, PACIFIC COAST BORAX COM-  
PANY, UNITED STATES BORAX COMPANY, AMERICAN  
POTASH & CHEMICAL CORPORATION, STAUFFER CHEMI-  
CAL COMPANY, WEST END CHEMICAL COMPANY, WEST-  
ERN BORAX COMPANY, LTD., GOLDFIELDS AMERICAN  
DEVELOPMENT COMPANY, PACIFIC ALKALI COMPANY,  
F. LESSER, JAMES M. GERSTLEY, FRANK M. JENIFER, P.  
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BANK OF AMERICA NATIONAL TRUST AND SAVINGS AS-  
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Clarence McAnisse Razor, deceased, BEN H. BROWN, as Special  
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Appeal from the United States District Court  
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Exhibit No. 11—(Continued)

State of California,  
County of Los Angeles—ss.

On this . . . . day of August, 1934, before me,  
....., a Notary Public in and  
for the said County of Los Angeles, State of Cali-  
fornia, residing therein, duly commissioned and  
sworn, personally appeared John K. Suckow, known  
to me to be the President, and Frank Buren, known  
to me to be the Secretary of Suckow Borax Mines  
Consolidated, Inc., the corporation which executed  
the within and annexed instrument, known to me to  
be the persons who executed the within instrument on  
behalf of the corporation therein named, and ac-  
knowledged to me that such corporation executed the  
same.

In Witness Whereof, I have hereunto set my hand  
and affixed my official seal in said county the day  
and year in this certificate first above written.

.....,  
Notary Public in and for said County and State.

State of California,  
County of Los Angeles—ss.

On this . . . . day of August, 1934, before me, Effie  
D. Botts, a Notary Public in and for the said County  
and State, residing therein, duly commissioned and  
sworn, personally appeared F. M. Jenifer, known  
to me to be the Vice-President of Pacific Coast  
Borax Company, the corporation that executed the  
within instrument, known to me to be the person

Exhibit No. 11—(Continued)

who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....,  
Notary Public in and for said County and State.

State of New York,  
County of New York—ss.

On this .... day of August, 1934, before me, ..... , a Notary Public in and for the said County of New York, State of New York, residing therein, duly commissioned and sworn, personally appeared F. T. Winters, known to me to be the Secretary of Pacific Coast Borax Company, the corporation which executed the within and annexed instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

.....,  
Notary Public in and for said County and State.

\* \* \* \*

Exhibit No. 11—(Continued)

EXHIBIT "H"

In the United States Circuit Court of Appeals  
For the Ninth Circuit

No. 7506

[Title of Cause.]

STIPULATION FOR DISMISSAL  
OF APPEAL

It Is Hereby Stipulated and Agreed by and between the parties to this cause, by their respective attorneys, that the appeal herein be dismissed without costs to either party; that each party pay his or its own costs in this court and in the court below; that the cost bond on appeal furnished by appellant be cancelled and the liability of the obligor thereon discharged.

It Is Further Stipulated that the Clerk of the said Circuit Court of Appeals is hereby requested and directed to forthwith and without notice enter an order dismissing the said appeal in accordance herewith.

Dated August . . . ., 1934.

HIRAM E. CASEY,  
FRANK BUREN,  
WILLIAM H. NEBLETT,  
ARNOLD A. ODLUM,

By . . . . .,  
Solicitors for Defendant and Appellant.

NEWLIN & ASHBURN,  
By . . . . .,  
Solicitors for Plaintiff and Appellee.

Exhibit No. 11—(Continued)

EXHIBIT "I"

In the Superior Court of the State of California  
In and For the County of Kern

No. 22868

JOHN K. SUCKOW,

Plaintiff,

vs.

UNITED STATES BORAX COMPANY, a corporation,  
PACIFIC COAST BORAX COMPANY, a corporation, and BORAX CONSOLIDATED, LTD., a corporation,

Defendants.

and

BORAX CONSOLIDATED, LTD., a corporation,

Cross-Complainant,

vs.

JOHN K. SUCKOW, MOJAVE BORAX COMPANY, LTD., a corporation, ONE DOE, TWO DOE and ONE DOE COMPANY, a corporation,

Cross-Defendants.

STIPULATION FOR JUDGMENT

It Is Hereby Stipulated and Agreed by and between the parties to the above entitled and numbered action that judgment may be forthwith and without notice made and entered in the above entitled cause, which said judgment, properly entitled, shall be in the following form, to wit:

Exhibit No. 11—(Continued)

“[Title of Court and Cause.]

JUDGMENT

It appearing to the court that all of the parties to the above entitled action (except certain cross-defendants sued under fictitious names) have duly executed and acknowledged and caused to be filed herein a certain stipulation for judgment, which is also duly signed by the attorneys for the respective parties, wherein and whereby it is stipulated and agreed that judgment be forthwith and without notice entered herein in the form and upon the terms and conditions herein set forth;

Now, Therefore, in consideration of the premises and in accordance with the said stipulation, and upon motion of Messrs. Newlin & Ashburn, attorneys for the defendants and cross-complaint in the said action, the cross-complaint herein is dismissed as to the said fictitious defendants One Doe, Two Doe and One Doe Company, a corporation; and

It Is Hereby Ordered, Adjudged and Decreed that plaintiff John K. Suckow do have or recover nothing of or from the defendants United States Borax Company, Pacific Coast Borax Company and Borax Consolidated, Ltd., or any of them, and that the complaint of the said plaintiff herein be and it hereby is dismissed; and

It Is Further Ordered, Adjudged and Decreed that the defendant and cross-complainant Borax Consolidated, Ltd., a corporation, was, at the time of the commencement of this action, and now is the owner in fee simple absolute and in possession of



## Exhibit No. 11—(Continued)

that certain lot, piece or parcel of land situated, lying and being in the County of Kern, State of California, and particularly described as follows, to wit: The East Half of the Southeast Quarter ( $E \frac{1}{2}$  of the  $SE \frac{1}{4}$ ) of Section 14, Township 11 North, Range 8 West, S.B.B.&M.; and the right, title and interest of the said defendant and cross-complainant Borax Consolidated, Ltd., a corporation, in and to the said premises, as such owner in fee simple, is hereby declared and established; and

It Is Further Ordered, Adjudged and Decreed that plaintiff John K. Suckow and cross-defendant Mojave Borax Company, Ltd., a corporation, have not and that neither of them has nor had they or either of them at the time of the commencement of this action any right, title, interest, lien or estate whatsoever in or to the land or premises above mentioned and described or in or to any part or parcel thereof; and

It Is Further Ordered, Adjudged and Decreed that the said plaintiff John K. Suckow and the said cross-defendant Mojave Borax Company, Ltd., a corporation, and all persons claiming under them or either of them subsequent to the filing of notice of pendency of said cross-complaint, to wit, December 29, 1932, be and they are hereby forever enjoined and debarred from asserting any claim of right or title whatever in, to or with respect to the said real property, or any part or parcel thereof, adverse to the said defendant and cross-complainant Borax Consolidated, Ltd., or any lien thereon, and from

Exhibit No. 11—(Continued)

in any manner interfering with said property or entering upon or exercising acts of ownership over the same or interfering with the use, occupancy and control of the said premises by the said defendant and cross-complainant Borax Consolidated, Ltd.; and

It Is Further Ordered, Adjudged and Decreed that no party shall recover any costs from any other party hereto.

Done In Open Court this . . . . day of July, 1934.

.....,  
Judge.”

and

It Is Further Hereby Stipulated that each party hereto does hereby waive any right or claim of right of appeal from any judgment entered upon and in accordance with this stipulation.

Dated August . . . ., 1934.

BRITTAN & MACK,  
FRANK BUREN,  
WILLIAM H. NEBLETT,  
ARNOLD A. ODLUM,

By .....

Attorneys for Plaintiff John K. Suckow and Cross-defendant Mojave Borax Company, Ltd.

.....,  
JOHN K. SUCKOW  
MOJAVE BORAX CO., LTD.,  
a corporation,

Exhibit No. 11—(Continued)

By .....  
President.

Attest:

.....  
Secretary.

GLEN ANDRICH,  
NEWLIN & ASHBURN,

By .....

Attorneys for Defendants United States Borax  
Company, a corporation, Pacific Coast Borax  
Company, a corporation, and for Defendant and  
Cross-Complainant Borax Consolidated, Ltd., a  
corporation,

UNITED STATES BORAX CO.,  
a corporation,

By .....  
Vice-President.

Attest:

.....  
Secretary.

PACIFIC COAST BORAX CO.,  
a corporation,

By .....  
Vice-President.

Attest:

Secretary.

BORAX CONSOLIDATED,  
LTD., a corporation,

By .....  
Its Attorney-in-Fact.



Exhibit No. 11—(Continued)

State of California,  
County of Los Angeles—ss.

On this .... day of August, 1934, before me,  
....., a Notary Public in and  
for said County and State, residing therein, duly  
commissioned and sworn, personally appeared John  
K. Suckow, personally known to me to be the person  
whose name is subscribed to the within instrument,  
and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand  
and affixed my official seal in said county the day  
and year in this certificate first above written.

.....,

Notary Public in and for said County and State.

State of California,  
County of Los Angeles—ss.

On this ..... day of August, 1934, before me,  
....., a Notary Public in and  
for said County and State, residing therein, duly  
commissioned and sworn, personally appeared John  
K. Suckow, known to me to be the President, and  
Frank Buren, known to me to be the Secretary of  
Mojave Borax Company, Ltd., the corporation which  
executed the within and annexed instrument, known  
to me to be the persons who executed the within  
instrument on behalf of the corporation therein  
named, and acknowledged to me that such corpora-  
tion executed the same.

In Witness Whereof, I have hereunto set my hand

Exhibit No. 11—(Continued)

and affixed my official seal in said county the day  
and year in this certificate first above written.

.....,  
Notary Public in and for said County and State.

State of California,  
County of Los Angeles—ss.

On this ..... day of August, 1934, before me,  
....., a Notary Public in and  
for said County and State, residing therein, duly  
commissioned and sworn, personally appeared C. R.  
Dudley, known to me to be the Vice-President, and  
J. R. Holtum, known to me to be the Secretary of  
United States Borax Company, the corporation  
which executed the within and annexed instrument,  
known to me to be the persons who executed the  
within instrument on behalf of the corporation  
therein named, and acknowledged to me that such  
corporation executed the same.

In Witness Whereof, I have hereunto set my hand  
and affixed my official seal in said county the day  
and year in this certificate first above written.

.....,  
Notary Public in and for said County and State.

State of California,  
County of Los Angeles—ss.

On this .... day of August, 1934, before me, Effie  
D. Botts, a Notary Public in and for the said County  
and State, residing therein, duly commissioned and  
sworn, personally appeared F. M. Jenifer, known to  
me to be the Vice-President of Pacific Coast Borax

Exhibit No. 11—(Continued)

Company, the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....,

Notary Public in and for said County and State.

State of New York,

County of New York—ss.

On this ..... day of August, 1934, before me, ..... , a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared F. T. Winters, known to me to be the Secretary of Pacific Coast Borax Company, the corporation which executed the within and annexed instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

.....,

Notary Public in and for said County and State.

Exhibit No. 11—(Continued)

State of California,  
County of Los Angeles—ss.

On this . . . . day of August, 1934, before me, Effie D. Botts, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared F. M. Jenifer, personally known to me to be the person described in and whose name is subscribed to the within instrument, as the attorney in fact of Borax Consolidated, Ltd., and acknowledged to me that he subscribed the name of Borax Consolidated, Ltd., thereto as principal and his own name as attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

.....,  
Notary Public in and for said County and State.

Exhibit No. 11—(Continued)

EXHIBIT “J”

In the United States Circuit Court of Appeals  
For the Ninth Circuit

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation,

Defendant and Appellant,  
vs.

PACIFIC COAST BORAX COMPANY, a corporation,

Plaintiff and Appellee.

STIPULATION FOR DISMISSAL  
OF APPEAL

Whereas, an interlocutory decree was on or about November 14, 1933, made and entered in the United States District Court for the Southern District of California, Northern Division, in that certain patent infringement equity action numbered D-18-M on the records of the said court and entitled “Pacific Coast Borax Company, a corporation, plaintiff, vs. Suckow Borax Mines Consolidated, Inc., a corporation, defendant”, and the said defendant has heretofore appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the said interlocutory decree, but the record on appeal has not been filed in the said appellate court and the cause has not been docketed therein, all of which is more particularly shown by the Certificate of the Clerk of the said District Court made pursuant to Rule 16 of the said Circuit Court of Appeals, and the parties



Exhibit No. 11—(Continued)

to the said cause have adjusted their differences and agreed upon a dismissal of the said appeal,

Now, Therefore, It Is Hereby Stipulated and Agreed by and between the parties to this cause, by their respective attorneys, that the appeal herein be dismissed without costs to either party; that each party pay its own costs in this court and in the court below; that the cost bond on appeal furnished by appellant be cancelled and the liability of the obligor thereon discharged.

It Is Further Stipulated that the Clerk of the said Circuit Court of Appeals is hereby requested and directed to forthwith and without notice enter an order dismissing the said appeal in accordance herewith.

Dated July . . . ., 1934.

JOSEPH F. WESTALL,  
Solicitor for Defendant and Appellant.

FRANK L. A. GRAHAM,  
Solicitor for Plaintiff and Appellee.

Exhibit No. 11—(Continued)

EXHIBIT "K"

In the United States Circuit Court of Appeals  
For the Ninth Circuit

No. 7299

In the Matter of SUCKOW BORAX MINES CONSOLIDATED, INC., a corporation,

Bankrupt.

BORAX CONSOLIDATED, LTD., a corporation,  
Appellant,

vs.

PACIFIC IRON AND STEEL COMPANY, INC.,  
a corporation, H. C. FOLTS, doing business as  
Folts Electric Service, and L. E. ELLINGTON,  
Petitioning Creditors; L. H. WILSON, SAMUEL B. SALBERSEN, and ROBERT M. NICE,  
Intervening Creditors; and HUBERT F. LAUGHARN, as Trustee in Bankruptcy of Suckow  
Borax Mines Consolidated, Inc., a corporation,  
Appellees.

STIPULATION FOR DISMISSAL OF APPEAL

It Is Hereby Stipulated and Agreed by and between the parties to this cause, by their respective attorneys, that the appeal herein be dismissed without costs to either party; that each party pay his or its own costs in this court and in the court below.

It Is Further Stipulated that the Clerk of the said Circuit Court of Appeals is hereby requested

Exhibit No. 11—(Continued)

and directed to forthwith and without notice enter an order dismissing the said appeal in accordance herewith.

Dated August . . . ., 1934.

NEWLIN & ASHBURN,  
Attorneys for Respondent and Appellant Borax Consolidated, Ltd., a corporation.

WALTER H. MOSES,  
Attorney for Petitioning and Intervening Creditors and Trustee in Bankruptcy, Appellees.

EXHIBIT "L"

In the District Court of the United States,  
Southern District of California,  
Central Division

No. 16938-H

In the Matter of SUCKOW BORAX MINES CONSOLIDATED, INC., a corporation,  
Alleged Bankrupt.

STIPULATION FOR DISMISSAL OF  
PROCEEDING FOR REVIEW

Whereas, a certain "Petition for Review of Referee's Order Directing, Instructing and Authorizing Trustee to Execute and Deliver Lease of Mining Property of the Bankrupt Estate" was on or about April 27, 1934, filed with the Referee in Bankruptcy in that certain bankruptcy proceeding pending in the United States District Court for the Southern Dis-



Exhibit No. 11—(Continued)

trict of California, Central Division, numbered 16,-938-H on the records of the said court and entitled "In the Matter of Suckow Borax Mines Consolidated, Inc., a corporation, Alleged Bankrupt", which said petition seeks to review a certain order made by Honorable Earl E. Moss, as Referee in Bankruptcy, in said cause on or about April 17, 1934, authorizing and directing Hubert F. Laugharn, as trustee in bankruptcy of the estate of the said alleged bankrupt, to enter into a certain lease, as Lessor, with Pacific Coast Borax Company, a corporation, as Lessee, covering certain real and personal property of the bankrupt corporation; and

Whereas, the said proceeding for a review of the said order is now pending in the said United States District Court for the Southern District of California, Central Division, and the parties in interest have agreed upon a dismissal of the said proceeding, Now, Therefore,

It Is Hereby Stipulated that the said Petition for Review and all proceedings thereon shall be and they hereby are dismissed without costs to any party and the above named court is hereby requested to forthwith and without notice make its order dismissing said proceeding in accordance herewith.

Dated August . . . , 1934.

HIRAM E. CASEY,  
FRANK BUREN,  
WILLIAM H. NEBLETT,  
ARNOLD A. ODLUM,

Attorneys for Petitioner on Review, Suckow Borax  
Mines Consolidated, Inc., a corporation.

Exhibit No. 11—(Continued)

NEWLIN & ASHBURN,  
Attorneys for Respondents Borax Consolidated,  
Ltd., a corporation, and Pacific Coast Borax  
Company, a corporation.

WALTER H. MOSES,  
Attorney for Hubert F. Laugharn, as said Trustee  
in Bankruptcy.

In accordance with the foregoing stipulation,

It Is Hereby Ordered that the above mentioned  
proceeding for review be and it hereby is dismissed  
without costs.

August

Dated July . . . . ., 1934.

.....,  
District Judge.

EXHIBIT "M"

In the District Court of the United States, Southern  
District of California, Central Division

No. 16938-H

In the Matter of SUCKOW BORAX MINES CON-  
SOLIDATED, INC., a corporation,  
Alleged Bankrupt.

STIPULATION FOR DISMISSAL OF  
PROCEEDING FOR REVIEW

Whereas, a certain "Petition for Review of Ref-  
eree's Order Directing Redelivery of Drill Rig and  
Engine to Estate of Alleged Bankrupt herein" was  
on or about June 2, 1934, filed with the Referee in  
Bankruptcy in that certain bankruptcy proceeding

Exhibit No. 11—(Continued)

pending in the United States District Court for the Southern District of California, Central Division, numbered 16938-H on the records of the said court and entitled “In the Matter of Suckow Borax Mines Consolidated, Inc., a corporation, Alleged Bankrupt”, which said petition seeks to review a certain order made by Honorable Earl E. Moss, as Referee in Bankruptcy, in said cause on or about May 25, 1934, pertaining to the title, ownership and possession of a certain “Armstrong well rig, Model No. 45-W Serial 27148 and one Le Roi Engine, Model 2 TC Serial 09269”; and

Whereas, the said proceeding for a review of the said order is now pending in the said United States District Court for the Southern District of California, Central Division, and the parties in interest have agreed upon a dismissal of the said proceeding, Now, Therefore,

It Is Hereby Stipulated that the said Petition for Review and all proceedings thereon shall be and they hereby are dismissed without costs to any party and the above named court is hereby requested to forthwith and without notice make its order dismissing said proceeding in accordance herewith.

Dated August . . . . ., 1934.

HIRAM E. CASEY,  
FRANK BUREN,  
WILLIAM H. NEBLETT,  
ARNOLD A. ODLUM,

Attorneys for Petitioner on Review, John K. Suckow.

Exhibit No. 11—(Continued)

WALTER H. MOSES,

Attorney for Hubert F. Laugharn, as said Trustee  
in Bankruptcy.

In accordance with the foregoing stipulation,

It Is Hereby Ordered that the above mentioned  
proceeding for review be and it hereby is dismissed  
without costs.

Dated August . . . ., 1934.

.....,

District Judge.

EXHIBIT "N"

RELEASE

Whereas, the undersigned, Stephen Hurley, Earl Wood and Tom A. Wood have or claim to have some claim or cause of action against John K. Suckow, Ruth Young Suckow, Suckow Borax Mines Consolidated, Inc., Suckow Borax Company, Ltd., and Mojave Borax Company, Ltd., upon or on account of a certain writing dated July 14, 1933, which is in words and figures as follows, to wit:

"Mr. Stephen Hurley

"Dear Sir:

"This will confirm verbal understanding of this date that the undersigned will protect you, so far as your commissions are concerned, in any deal which the undersigned may make with Messrs. Tom A. Wood, Earl Wood and associates, affecting the controlling stock of the Suckow Borax Mines Consolidated, Inc., and forty acres of land in section 14, T.

Exhibit No. 11—(Continued)

11 N., R. 8 W., S.B.M., being the E $\frac{1}{2}$  W $\frac{1}{2}$  NE $\frac{1}{4}$  of said section.

“It is understood that in the event you bring a proposition from the said parties which is acceptable to the undersigned, and an agreement is formally entered into between said parties and the undersigned, you shall receive 50% of all monies received by the undersigned in connection therewith, and also —50% of all stock in any new corporation which may be formed for the purpose of carrying out the purposes of the transaction.

“This is not an option nor is it to be construed as in any wise interfering with or preventing the consummation of any other deal with other parties which the undersigned may desire to enter into in the meantime.

Very truly yours,

JOHN K. SUCKOW,  
RUTH YOUNG SUCKOW.”

and

Whereas, the said undersigned persons have heretofore asserted against Pacific Coast Borax Company, Borax Consolidated, Ltd., and United States Borax Company, or one or more of them, certain claims on account of the said written instrument or things alleged to have been done under or pursuant thereto,

Now, Therefore, in consideration of the sum of \$..... to the said Stephen Hurley, Earl Wood and Tom A. Wood in hand paid, receipt of which contemporaneously with the signing of this instru-



## Exhibit No. 11—(Continued)

ment is hereby acknowledged, the undersigned Stephen Hurley and ..... Hurley, his wife, Tom A. Wood and ..... Wood, his wife, and Earl Wood, an unmarried man, do each for himself or herself and his or her heirs, executors, administrators and assigns, release and forever discharge said Suckow Borax Mines Consolidated, Inc., a corporation, John K. Suckow, Ruth Young Suckow, Pacific Coast Borax Company, a Nevada corporation, Borax Consolidated, Ltd., an English corporation, and United States Borax Company, a West Virginia corporation, and each of them, their heirs, executors, administrators, successors and assigns, of and from all actions and causes of action, claims and demands whatsoever, whether or not well founded in fact or in law, for or on account of the making or alleged breach of the said instrument of July 14, 1933, or for or on account of any matter growing out of the said instrument and anything done or omitted in connection therewith, and particularly of and from any such action, cause of action, claim or demand growing out of or pertaining to the negotiation or the purchase by said Pacific Coast Borax Company, Borax Consolidated, Ltd. and United States Borax Company, or any of them, of all or any of the property of Suckow Borax Mines Consolidated, Inc., Suckow Borax Company, Ltd., Mojave Borax Company, Ltd., John K. Suckow and Ruth Young Suckow (also known as Ruth E. Suckow, Ruth Y. Suckow, Ruth Young and Ruth E. Young), or any of them and the undersigned do also release

## Exhibit No. 11—(Continued)

and discharge each and all of the above mentioned persons and corporations of and from any and all and all manner of actions and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity which the undersigned or any of them ever had or now have or has or which they or the heirs, executors or administrators or assigns of any of them hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever, whether herein specifically mentioned or otherwise, from the beginning of the world to the date of these presents; and full satisfaction of all of said claims, demands, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, trespasses, damages, judgments and executions, is hereby acknowledged.

The undersigned and each of them specifically waive any right or claimed right to hereafter assert that any cause of action or alleged cause of action or claim or demand of any nature or kind whatsoever has been, through oversight or error or intentionally or unintentionally, omitted from this release; it being the purpose and intention of this instrument to completely release and discharge said and each of the above named persons and corporations of and from any and all liability of any nature or kind whatsoever now or hereafter existing or alleged or claimed

Exhibit No. 11—(Continued)

to exist for or on account of any matter, thing or occurrence whatsoever.

Each of the undersigned further states and agrees that he or she has read this instrument in full and fully understands the same, and has executed it freely and in consideration of the above mentioned sum of \$. . . . .

In Witness Whereof, the undersigned have hereunto set their respective hands this . . . . day of August, 1934.

. . . . .  
. . . . .  
. . . . .  
. . . . .

State of California,  
County of Los Angeles—ss.

On this . . . . . day of August, 1934, before me, . . . . ., a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Stephen Hurley and . . . . . Hurley, Tom A. Wood and . . . . . Wood, and Earl Wood, an unmarried man, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

. . . . .,  
Notary Public in and for said County and State.



Exhibit No. 11—(Continued)

EXHIBIT "O"

Los Angeles, California,  
August . . . ., 1934.

To Pacific Coast Borax Company, a Nevada corporation, Borax Consolidated, Ltd., an English corporation, and United States Borax Company, a West Virginia corporation.

Gentlemen:

Referring to that certain instrument dated July 14, 1933, signed by John K. Suckow and Ruth Young Suckow, and addressed to Mr. Stephen Hurley, which is in words and figures as follows:

"This will confirm verbal understanding of this date that the undersigned will protect you, so far as your commissions are concerned, in any deal which the undersigned may make with Messrs. Tom A. Wood, Earl Wood and associates, affecting the controlling stock of the Suckow Borax Mines Consolidated, Inc., and forty acres of land in section 14, T. 11 N., R. 8 W., S.B.M., being the E $\frac{1}{2}$  W $\frac{1}{2}$  NE $\frac{1}{4}$  of said section.

"It is understood that in the event you bring a proposition from the said parties which is acceptable to the undersigned, and an agreement is formally entered into between said parties and the undersigned, you shall receive 50% of all monies received by the undersigned in connection therewith, and also—50% of all stock in any new corporation which may

## Exhibit No. 11—(Continued)

be formed for the purpose of carrying out the purposes of the transaction.

“This is not an option nor is it to be construed as in any wise interfering with or preventing the consummation of any other deal with other parties which the undersigned may desire to enter into in the meantime.”

We are informed that you are about to purchase and/or lease from the said John K. Suckow and Ruth Young Suckow and/or Suckow Borax Mines Consolidated, Inc., Suckow Borax Company, Ltd. and Mojave Borax Company, Ltd. or some of them certain real properties belonging to or alleged to belong to them or some of them; this instrument is executed by each of the undersigned with the understanding that you will rely upon it in making said purchase and/or lease and as a representation upon which it is conceded you are entitled to rely in the making of said purchase and/or lease. To that end, it is hereby stated and represented to you, and each of you, that the undersigned do not nor does any of them make or assert any claim against you or any of you on account of the purchase or lease or negotiation of purchase or lease of all or any of the above mentioned properties or on account of the above quoted instrument of July 14, 1933, or anything done or alleged to have been done or omitted or alleged to have been omitted by you or any of you thereunder or with respect thereto. It is the purpose and intention of this instrument to relinquish, so far as you and each of you are concerned, any claims heretofore asserted by the undersigned or any of

Exhibit No. 11—(Continued)

them against you or any of you with respect to the above quoted instrument or anything done or to be done by you or any of you with respect thereto or with respect to the properties therein mentioned or any other properties of John K. Suckow, Ruth Young Suckow, Suckow Borax Mines Consolidated, Inc., Suckow Borax Company, Ltd. and Mojave Borax Company, or any of them, and to assure you that, so far as the undersigned and each of them are concerned, they have and assert no rights which can lawfully interfere with your negotiating or consummating any of the above mentioned purchases or lease.

Any and all rights with respect to the said instrument of July 14, 1933, and anything done or omitted thereunder are expressly reserved as to the said John K. Suckow and Ruth Young Suckow.

In Witness Whereof, we have hereunto set our respective hands this . . . . . day of August, 1934.

STEPHEN HURLEY,  
TOM A. WOOD,  
EARL WOOD.

State of California,  
County of Los Angeles—ss.

On this . . . . . day of August, 1934, before me, . . . . ., a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Stephen Hurley, . . . . . Hurley, Tom A. Wood, . . . . . Wood, and Earl

Exhibit No. 11—(Continued)

Wood, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

.....,  
Notary Public in and for said County and State.

EXHIBIT "P"

PROMISSORY NOTE

\$.....

Los Angeles, California, August . . . ., 1934.

..... after date and for value received, the undersigned promises to pay to John K. Suckow, or order, at its office in the Associated Realty Building, City of Los Angeles, California, the sum of ..... Dollars without interest.

The undersigned further promises to pay all costs of collection including attorney's fees, which may be incurred in the collection of this note, or any portion thereof, and in case suit is instituted for such purpose, the amount of such attorneys' fees shall be such amount as the court shall adjudge reasonable.

PACIFIC COAST BORAX CO.,  
a corporation,

By .....  
Vice-President.

Attest:

.....,  
Secretary.

Exhibit No. 11—(Continued)

EXHIBIT “Q”

RELEASE

Whereas, the undersigned, Borax Consolidated, Ltd., an English corporation, is the owner of an undivided one-half interest in and to the Southwest Quarter (SW $\frac{1}{4}$ ) and the West Half of the Southeast Quarter (W $\frac{1}{2}$  of the SE $\frac{1}{4}$ ) of Section 14, Township 11 North, Range 8 West, S.B.B.&M., and the other undivided one-half thereof was originally owned by John K. Suckow, and Suckow Borax Mines Consolidated, Inc. succeeded to the right, title and interest of the said John K. Suckow in and to his said half of the said premises, and the said John K. Suckow and Suckow Borax Mines Consolidated, Inc. have been in possession of the said premises and have from time to time mined, removed and sold valuable boron ore extracted therefrom and have not paid to the undersigned any compensation whatever for or on account of its half interest in the said ore so removed and sold, and the undersigned has heretofore commenced an action in the United States District Court for the Southern District of California which is entitled “Borax Consolidated, Ltd., a corporation, Plaintiff, vs. Suckow Borax Mines Consolidated, Inc., a corporation, John K. Suckow, Defendants” and is numbered C-107-H on the records of the said court and is now pending in the Central Division of the said court as to the defendant Suckow Borax Mines Consolidated, Inc. and has heretofore proceeded to judgment as to the defendant John K. Suckow; and



## Exhibit No. 11—(Continued)

Whereas, the undersigned and said defendants in the said action have heretofore compromised all of their differences,

Now, Therefore, pursuant to and in furtherance of the said compromise, the undersigned, Borax Consolidated, Ltd., a corporation, does hereby for itself, its successors and assigns, release and forever discharge the said John K. Suckow, Suckow Borax Mines Consolidated, Inc., the estate in bankruptcy of the said Suckow Borax Mines Consolidated, Inc., and the trustee in bankruptcy of the said estate, and their and each of their heirs, executors, administrators, successors and assigns, of and from any and all actions and causes of action, claims and demands whatsoever, whether or not well founded in fact or in law, now or heretofore existing or claimed to exist, for or on account of the mining, removal and/or sale of any ore from the above described premises and for or on account of any and all wrongs or alleged wrongs set forth in the Bill in Equity in the said cause No. C-107-H; and full satisfaction of all of said claims, demands and causes of action is hereby acknowledged.

In Witness Whereof, the said Borax Consolidated, Ltd. has caused this instrument to be executed by its duly authorized attorney-in-fact, this ..... day of August, 1934.

BORAX CONSOLIDATED,  
LTD., a corporation,

By .....,  
Its Attorney-in-fact.

Exhibit No. 11—(Continued)

State of California,  
County of Los Angeles—ss.

On this . . . . day of August, 1934, before me, Effie D. Botts, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared J. M. Jenifer, personally known to me to be the person described in and whose name is subscribed to the within instrument, as the attorney-in-fact of Borax Consolidated, Ltd., and acknowledged to me that he subscribed the name of Borax Consolidated, Ltd. thereto as principal and his own name as attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

(Seal)

EFFIE D. BOTTS,

Notary Public in and for said County and State.

Exhibit No. 11—(Continued)

EXHIBIT "R"

In the District Court of the United States in and for  
the Southern District of California, Central  
Division

In Equity No. C-107-H

BORAX CONSOLIDATED, LTD., a corporation,  
Plaintiff,

vs.

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation, JOHN K. SUCKOW,  
Defendants.

STIPULATION FOR DISMISSAL

It Is Hereby Stipulated and Agreed that the above  
entitled action be forthwith dismissed as to defend-  
ant Suckow Borax Mines Consolidated, Inc., a cor-  
poration, without costs to either party as against  
the other, and that an order to that effect may be  
forthwith entered by either party without notice.

Dated August . . . . ., 1934.

NEWLIN & ASHBURN,

By . . . . .,

Solicitors for Plaintiff.

HIRAM E. CASEY,

FRANK BUREN,

WILLIAM H. NEBLETT,

ARNOLD A. ODLUM,

By . . . . .,

Solicitors for defendant Suckow Borax Mines Con-  
solidated, Inc., a corporation.



Exhibit No. 11—(Continued)

In accordance with the foregoing stipulation, the above entitled action is hereby dismissed, without costs to either party, as to the defendant Suckow Borax Mines Consolidated, Inc.

Dated August . . . . ., 1934.

. . . . .,  
District Judge.

EXHIBIT "S"

In the District Court of the United States in and for the Southern District of California, Central Division

In Equity No. C-107-H

BORAX CONSOLIDATED, LTD., a corporation,  
Plaintiff,

vs.

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation, JOHN K. SUCKOW,  
Defendants.

SATISFACTION OF JUDGMENT

The judgment or decree herein against the defendant John K. Suckow having been compromised, full satisfaction is hereby acknowledged of the said judgment which was entered on February 9, 1934, in Judgment Book 12, at page 18, in favor of Borax Consolidated, Ltd., a corporation, plaintiff, and against said John K. Suckow, defendant, and the

Exhibit No. 11—(Continued)

Clerk is hereby authorized and directed to enter full satisfaction of record in said action.

Dated August . . . . ., 1934.

NEWLIN & ASHBURN,

By . . . . .,  
Attorneys for Plaintiff.

BORAX CONSOLIDATED,  
LTD., a corporation,

By . . . . .,  
Its Attorney-in-Fact.

State of California,  
County of Los Angeles—ss.

On this . . . . . day of August, 1934, before me Effie D. Botts, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared F. M. Jenifer, personally known to me to be the person described in and whose name is subscribed to the within instrument, as the attorney-in-fact of Borax Consolidated, Ltd., and acknowledged to me that he subscribed the name of Borax Consolidated, Ltd. thereto as principal and his own name as attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

(Seal)

EFFIE D. BOTTS,

Notary Public in and for said County and State.

Exhibit No. 11—(Continued)

EXHIBIT "T"

In the District Court of the United States in and  
for the Southern District of California, Central  
Division

In Equity No. 310-J

BORAX CONSOLIDATED, LTD., a corporation,

Plaintiff,

vs.

RUTH E. SUCKOW (also known as Ruth Young, Ruth E. Young  
and Ruth Y. Suckow), JOHN K. SUCKOW, JOSEPH JENSEN,  
LOIS W. JENSEN, WILLIAM H. NEBLETT, JANE DOE NEB-  
LETT, FRANK BUREN, JANE DOE BUREN, THOMAS W.  
McMANUS, JANE DOE McMANUS, WILLIAM McCLINTOCK,  
ELLEN McCLINTOCK, PAUL FRIEDMAN, JANE DOE  
FRIEDMAN, H. D. STEVENS, JANE DOE STEVENS, C. W.  
HILL, JANE DOE HILL, H. H. MORETON, JANE DOE MORE-  
TON, STEPHEN HURLEY, JANE DOE HURLEY, EARL  
WOOD, JANE DOE WOOD, TOM A. WOOD, MARY ROE  
WOOD, SUCKOW BORAX COMPANY, LTD., a corporation,  
MOJAVE BORAX COMPANY, LTD., a corporation, SUCKOW  
BORAX MINES CONSOLIDATED, INC., a corporation, SE-  
CURITY-FIRST NATIONAL BANK OF LOS ANGELES, a na-  
tional banking association, TITLE INSURANCE AND TRUST  
COMPANY, a corporation, JOHN DOE ONE, JOHN DOE TWO,  
JOHN DOE THREE, JOHN DOE FOUR, JOHN DOE FIVE,  
MARY DOE ONE, MARY DOE TWO, MARY DOE THREE,  
MARY DOE FOUR, MARY DOE FIVE, JOHN DOE COR-  
PORATION ONE, a corporation, JOHN DOE CORPORATION  
TWO, a corporation, JOHN DOE CORPORATION THREE, a  
corporation, JOHN DOE CORPORATION FOUR, a corpora-  
tion, and JOHN DOE CORPORATION FIVE, a corporation,

Defendants.

STIPULATION FOR DISMISSAL

It Is Hereby Stipulated and Agreed between the  
undersigned parties to the above entitled action (be-

## Exhibit No. 11—(Continued)

ing the only parties who have appeared therein) that all issues of the said complaint and of the answers of the respective parties pertaining to the East Half of the Southeast Quarter ( $E\frac{1}{2}$  of the  $SE\frac{1}{4}$ ) of Section 14, Township 11 North, Range 8 West, S.B. B.&M., in the County of Kern, State of California, and particularly the issues raised with respect to subdivision (g) of paragraph VII of the bill of complaint in the above-entitled action, be, and they hereby are, withdrawn and eliminated from said action; and

It Is Further Stipulated and Agreed that the above entitled action may be forthwith dismissed as to all defendants without costs to any party as against any other party, and that an order to that effect may be forthwith entered by any party without notice.

Dated August . . . . ., 1934.

NEWLIN & ASHBURN,

By . . . . .,  
Solicitors for Plaintiff.

WILLIAM H. NEBLETT,  
FRANK BUREN,  
EDWARD H. MITCHELL,  
ARNOLD A. ODLUM,

By . . . . .,  
Solicitors for Defendants Ruth E. Suckow, John K. Suckow, Suckow Borax Company, Ltd., Mojave Borax Company, Ltd., and Suckow Borax Mines Consolidated, Inc.

Exhibit No. 11—(Continued)

WILLIAM H. NEBLETT,  
ARNOLD A. ODLUM,  
EDWARD H. MITCHELL,

By . . . . .,

Solicitors for Defendants William H. Neblett, Ruby  
Neblett, Frank Buren, Helen E. Buren, Thomas  
W. McManus, and Ethel B. McManus.

L. R. MARTINEAU, JR., and  
WARREN STRATTON,

By . . . . .,

Solicitors for Defendants Joseph Jensen, Lois W.  
Jensen, H. D. Stevens, and Josephine W. Stevens.

BURKE AND HERRON &  
RUSSELL GRAHAM,

By . . . . .,

Solicitors for Defendants William McClintock, El-  
len McClintock, Paul Friedman, and Rose K.  
Friedman.

In accordance with the foregoing stipulation the  
above entitled action is hereby dismissed as to all  
parties, and without costs to any party.

Dated August . . . . ., 1934.

. . . . .,  
District Judge.



## Exhibit No. 11—(Continued)

## EXHIBIT "U"

## RELEASE

Whereas, an interlocutory decree was on or about November 14, 1933, made and entered in that certain action in the United States District Court for the Southern District of California, Northern Division, which is entitled "Pacific Coast Borax Company, a corporation, Plaintiff, vs. Suckow Borax Mines Consolidated, Inc., a corporation, Defendant" and is numbered In Equity No. D-18-M, and paragraph 3 thereof provides as follows:

"3. That plaintiff recover from the defendant the profits and gains which the defendant has derived, all by reason of the aforesaid infringement of Claim 2 of the aforesaid Letters Patent No. 1,487,806, and that plaintiff recover of said defendant any and all damages which plaintiff has sustained by reason of the said infringement."

The undersigned, Pacific Coast Borax Company, a corporation, for valuable consideration, receipt of which is hereby acknowledged, does hereby release and discharge the said defendant Suckow Borax Mines Consolidated, Inc., a corporation, and the estate in bankruptcy of the said Suckow Borax Mines Consolidated, Inc., and the trustee in bankruptcy of the said estate of and from any and all liability or obligation to account for or pay to the undersigned any profits or gains mentioned in the said paragraph 3, and the undersigned does also waive and relinquish all claim to any and all damages mentioned in the said paragraph 3, and does

Exhibit No. 11—(Continued)

release and discharge the said defendant corporation and its estate and trustee in bankruptcy of and from any and all obligation or liability to perform or comply with all or any of the terms or provisions of said paragraph 3 of the said interlocutory decree, and does acknowledge full satisfaction of all claims and demands for such profits, gains and damages as are therein mentioned.

This instrument shall have no effect whatever upon the adjudications contained in the paragraphs of the said interlocutory decree other than the above quoted paragraph 3.

In Witness Whereof, the said Pacific Coast Borax Company has caused this instrument to be executed by its corporate officers first thereunto duly authorized and its corporate seal to be hereunto affixed this . . . . . day of August, 1934.

PACIFIC COAST BORAX CO.,  
a corporation,

By . . . . . ,  
Vice-President.

Attest:

. . . . . ,  
Secretary.

State of California,  
County of Los Angeles—ss.

On this . . . . day of August, 1934, before me, Effie D. Botts, a Notary Public in and for said County and State, residing therein, duly commissioned and

Exhibit No. 11—(Continued)

sworn, personally appeared F. M. Jenifer, known to me to be the Vice-President of Pacific Coast Borax Company, the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....,

Notary Public in and for said County and State.

State of New York,  
County of New York—ss.

On this ..... day of August, 1934, before me, ....., a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared F. T. Winters, known to me to be the Secretary of Pacific Coast Borax Company, the corporation which executed the within and annexed instrument known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

.....,

Notary Public in and for said County and State.

Exhibit No. 11—(Continued)

EXHIBIT "V"

In the District Court of the United States for  
the Southern District of California, Northern  
Division

In Equity No. D-18-M

PACIFIC COAST BORAX COMPANY, a corpor-  
ation,

Plaintiff,

vs.

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation,

Defendant.

PARTIAL SATISFACTION OF JUDGMENT

For valuable consideration to the undersigned, Pacific Coast Borax Company, a corporation, in hand paid by Suckow Borax Mines Consolidated, Inc., a corporation, defendant in the above entitled action, partial satisfaction is hereby acknowledged of that certain interlocutory decree herein in favor of plaintiff, Pacific Coast Borax Company, a corporation, and against defendant Suckow Borax Mines Consolidated, Inc., a corporation, which was made and entered on the ..... day of November, 1933, in Judgment Book ....., at page ..... of the records of this court, to wit, satisfaction is acknowledged with respect only to paragraphs 3, 4 and 6 of the said judgment, all rights under paragraphs 1, 2 and 5 of the said interlocutory decree being ex-

Exhibit No. 11—(Continued)

pressly reserved and no waiver or satisfaction thereof being intended hereby. The Clerk of the said court is hereby authorized and directed to enter partial satisfaction in accordance herewith.

Dated August . . . . ., 1934.

NEWLIN & ASHBURN,

By . . . . .,  
Attorneys for Plaintiff.

PACIFIC COAST BORAX CO.,  
a corporation,

By . . . . .,  
Vice-President.

State of California,  
County of Los Angeles—ss.

On this . . . . day of August, 1934, before me, Effie D. Botts, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared F. M. Jenifer, known to me to be the Vice-President of Pacific Coast Borax Company, the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

. . . . .,  
Notary Public in and for said County and State.



Exhibit No. 11—(Continued)

EXHIBIT "W"

GENERAL RELEASE

Know All Men By These Presents:

That the undersigned, Pacific Coast Borax Company, a Nevada corporation, Borax Consolidated, Ltd., an English corporation, and United States Borax Company, a West Virginia corporation, and each of them, for valuable consideration to them in hand paid, receipt of which is hereby acknowledged, have released and forever discharged and by these presents do, for themselves, their successors and assigns, release and forever discharge John K. Suckow, of Los Angeles, California, his heirs, executors, administrators and assigns, of and from any and all actions and causes of action, claims and demands whatsoever, whether or not well founded in fact or in law, and of and from any and all and all manner of suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity which against the said John K. Suckow, his heirs, executors, administrators and assigns, or any of them, the undersigned have had or now have or which they or the successors or assigns of any of them hereafter can, shall or may have for, upon or by reason of any matter, cause or

## Exhibit No. 11—(Continued)

thing whatsoever, whether herein specifically mentioned or otherwise, from the beginning of the world to the date of these presents; and full satisfaction of all of said claims, demands, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, trespasses, damages, judgments and executions, is hereby acknowledged.

It is the specific intent and purpose hereof to release and discharge any and all claims and causes of action of any kind or nature whatsoever, whether known or unknown and whether specifically mentioned herein or not, which may exist or might be claimed to exist at or prior to the date hereof, and the undersigned specifically waives any right or claim of right to hereafter assert that any cause of action or alleged cause of action or claim or demand of any nature or kind whatsoever has been, through oversight or error or intentionally or unintentionally, omitted from this release.

In Witness Whereof, said Pacific Coast Borax Company and United States Borax Company have caused this instrument to be executed by their corporate officers first thereunto duly authorized and their corporate seals to be hereunto affixed, and said Borax Consolidated, Ltd. has caused this instru-

Exhibit No. 11—(Continued)

ment to be executed by its attorney-in-fact thereunto duly authorized, the . . . . . day of July, 1943.

PACIFIC COAST BORAX CO.,  
a corporation,

By . . . . . ,  
Vice-President.

Attest:

. . . . . ,  
Secretary.

UNITED STATES BORAX CO.,  
a corporation,

By . . . . . ,  
Vice-President.

Attest:

. . . . . ,  
Secretary.

BORAX CONSOLIDATED,  
LTD., a corporation,

By . . . . . ,  
Its Attorney-in-Fact.

State of California,  
County of Los Angeles—ss.

On this . . . . day of July, 1943, before me, Effie D. Botts, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared F. M. Jenifer, known to me to be the Vice-President of Pacific Coast Borax Company, the corporation that executed the within

Exhibit No. 11—(Continued)

instrument, known to me to be the person who executed the within instrument, on behalf of the corporation, therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....,

Notary Public in and for said County and State.

State of New York,  
County of New York—ss.

On this ..... day of July, 1934, before me, ..... , a Notary Public in and for the said County of New York, State of New York, residing therein, duly commissioned and sworn, personally appeared F. T. Winters, known to me to be the Secretary of Pacific Coast Borax Company, the corporation which executed the within and annexed instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

.....

Notary Public in and for said County and State.

Exhibit No. 11—(Continued)

State of California,  
County of Los Angeles—ss.

On this ..... day of July, 1934, before me,  
....., a Notary Public in and  
for the said County and State, residing therein, duly  
commissioned and sworn, personally appeared C. R.  
Dudley, known to me to be the Vice-President, and  
J. R. Holtum, known to me to be the Secretary of  
United States Borax Company, the corporation  
which executed the within and annexed instrument,  
known to me to be the persons who executed the  
within instrument on behalf of the corporation  
therein named, and acknowledged to me that such  
corporation executed the same.

In Witness Whereof, I have hereunto set my hand  
and affixed my official seal the day and year in this  
certificate first above written.

.....,

Notary Public in and for said County and State.

State of California,  
County of Los Angeles—ss.

On this .... day of July, 1934, before me, Effie  
D. Botts, a Notary Public in and for the said County  
and State, residing therein, duly commissioned and  
sworn, personally appeared F. M. Jenifer, person-  
ally known to me to be the person described in and  
whose name is subscribed to the within instrument,  
as the attorney-in-fact of Borax Consolidated, Ltd.,  
and acknowledged to me that he subscribed the name



Exhibit No. 11—(Continued)

of Borax Consolidated, Ltd. thereto as principal and his own name as attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

.....,  
Notary Public in and for said County and State.

EXHIBIT "X"

RELEASE

Whereas, the undersigned, N. V. Chemische Fabrik Gembo, a corporation organized and existing under and by virtue of the laws of the Kingdom of the Netherlands, has heretofore filed its proof of unsecured debt in that certain bankruptcy proceeding now pending in the United States District Court for the Southern District of California, Central Division, numbered 16938-H on the records thereof and entitled "In the Matter of Suckow Borax Mines Consolidated, Inc., a corporation, Alleged Bankrupt", which said claim is in the sum of \$140,000.00, the consideration therefor, as stated in the proof of debt, being "damages arising from the breach of that certain contract made and entered into by and between the bankrupt and N. V. Chemische Fabrik Gembo dated 4th day of September, 1929", being the same contract of which copy is attached to the Bill in Equity in equity cause No. C-107-H, now pending in the said court and entitled "Borax Consolidated, Ltd., a corporation, Plaintiff, vs. Suckow

Exhibit No. 11—(Continued)

Borax Mines Consolidated, Inc., a corporation, John K. Suckow, Defendants''; and

Whereas, valuable consideration has been paid to the undersigned for the execution of this instrument and receipt of said valuable consideration is hereby acknowledged;

Now, Therefore, in consideration of the premises, the undersigned does hereby withdraw its said claim in the said bankruptcy proceeding and its said proof of unsecured debt based thereon, and does also for itself, its successors and assigns, release and forever discharge said Suckow Borax Mines Consolidated, Inc., a corporation, its estate in bankruptcy and its trustee in bankruptcy, and John K. Suckow, his heirs, executors, administrators and assigns, of and from any and all actions and causes of action, claims and demands whatsoever, whether or not well founded in fact or in law, for or on account of any of the matters or things hereinabove mentioned, to wit, alleged damages for breach of the said contract of September 4, 1929, or for or on account of any matter or thing done or omitted by said Suckow Borax Mines Consolidated, Inc., and John K. Suckow, or either of them, under or pursuant to the said contract or claimed to have been done under or pursuant thereto, or for or on account of any omission of the said Suckow Borax Mines Consolidated, Inc. and John K. Suckow, or either of them, with respect to the said contract, it being the purpose and intention hereof to completely relinquish, waive and discharge any and all rights of any nature or kind whatsoever, whether known or unknown, which

## Exhibit No. 11—(Continued)

the undersigned may claim to have with respect to the said contract or any breach thereof, or anything done or omitted with respect thereto by the said Suckow Borax Mines Consolidated, Inc. and John K. Suckow, or either of them, and the undersigned does hereby acknowledge full satisfaction of all of said claims, demands and causes of action pertaining to the said contract of September 4, 1929.

In Witness Whereof, the said N. V. Chemische Fabrik Gembo has caused this instrument to be executed by its Managing Director first thereunto duly authorized and its corporate seal to be hereunto affixed, this .... day of ....., 1934.

N. V. CHEMISCHE FABRIK  
GEMBO,

By .....,  
Its Managing Director.

Consulate General of  
United States of America,  
Amsterdam, Netherlands—ss.

On this .... day of ....., 1934, before me, ....., a Vice Consul of the United States of America, at Amsterdam in the Kingdom of the Netherlands, personally appeared Jan Albert Koning, personally known to me to be the person described in and whose name is subscribed to the within instrument as the Managing Director of N. V. Chemische Fabrik Gembo, and acknowledged to me that he subscribed the name of said N. V. Chemische Fabrik Gembo thereto as principal, and his own name as Managing Director.

Exhibit No. 11—(Continued)

In Witness Whereof, I have hereunto set my hand and affixed the official seal of the said Consulate at Amsterdam in the Kingdom of the Netherlands the day and year in this certificate first above written.

.....,  
Vice Consul of United States of America.

EXHIBIT "Y"

In the District Court of the United States in and for the Southern District of California, Central Division

In Equity No. C-107-H

BORAX CONSOLIDATED, LTD., a corporation,  
Plaintiff,

vs.

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation, JOHN K. SUCKOW,  
Defendants.

STIPULATION FOR DISMISSAL OF  
SUPPLEMENTARY PROCEEDINGS

Whereas, the plaintiff and the judgment debtor, John K. Suckow, have compromised the judgment upon which this court's "Order That Judgment Debtor Appear and Answer Concerning His Property in Supplementary Proceedings" was made on June 7, 1934, and the said examination has been from time to time continued to July ....., 1934, at ...m.;

Exhibit No. 11—(Continued)

Now, Therefore, in consideration of the premises,

It Is Hereby Stipulated that the said proceeding for examination of the said judgment debtor be forthwith dismissed without costs to either party, and that an order to that effect may be forthwith made without notice by the Judge of the above entitled court or the Special Master before whom the said examination is pending.

Dated August . . . . ., 1934.

NEWLIN & ASHBURN,

By . . . . .,  
Solicitors for Plaintiff.

HIREM E. CASEY,  
FRANK BUREN,  
WILLIAM H. NEBLETT,  
ARNOLD A. ODLUM,

By . . . . .,  
Solicitors for Defendants.

In accordance with the foregoing stipulation,

It Is Hereby Ordered that the proceeding for the examination of the judgment debtor in supplementary proceedings, which is now pending pursuant to the order of this court made June 7, 1934, be and it hereby is dismissed without costs to either party.

Dated August . . . . ., 1934.

. . . . .,  
District Judge.



EXHIBIT No. 12

GENERAL RELEASE OF ALL CLAIMS

Executed December 21, 1942

Know All Men By These Presents:

That the undersigned, Suckow Borax Mines Consolidated, Inc., a Delaware corporation, for valuable consideration to it in hand paid, receipt of which is hereby acknowledged, has released and forever discharged, and by these presents does for itself, its successors and assigns, release and forever discharge Pacific Coast Borax Company, a Nevada corporation, Borax Consolidated, Ltd., an English corporation, and their and each of their stockholders, directors, officers, agents, servants, employees, attorneys-in-fact and attorneys at law, of and from any and all actions and causes of action, claims and demands whatsoever, whether or not well founded in fact or in law, and of and from any and all and all manner of suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity which against the said corporations, or either of them, or against all or any of the stockholders, directors, officers, agents, servants, employees, attorneys-in-fact or attorneys at law of them, or either of them, the undersigned has had or now has or which it or its successors or assigns hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever, whether herein specifically mentioned or otherwise,

## Exhibit No. 12—(Continued)

from the beginning of the world to the date of these presents; and full satisfaction of all of said claims, demands, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, trespasses, damages, judgments and executions, is hereby acknowledged.

Without limiting the generality of the foregoing release, the undersigned does for itself, its successors and assigns, release and forever discharge said Pacific Coast Borax Company, Borax Consolidated, Ltd., their and each of their stockholders, directors, officers, agents, servants, employees, attorneys-in-fact and attorneys at law, of and from any and all causes of action, claims and demands whatsoever, whether or not well founded in fact or in law, for or on account of any injury or damage to the mine in that certain real property described as Parcel 1 in lease of September 17, 1934, between Suckow Borax Mines Consolidated, Inc., a Delaware corporation, and Hubert F. Laugharn, as Trustee in Bankruptcy of the Estate of said Suckow Borax Mines Consolidated, Inc., as joint lessors, and said Pacific Coast Borax Company, as lessee, which was recorded October 2, 1934, in Book 542, at page 176 of Official Records of Kern County, California, and of and from any and all claims for liability for damage, loss or expense growing or claimed to have grown out of or to have been proximately caused by the caving of the mine in the said Parcel 1 and of and from any liability for the

## Exhibit No. 12—(Continued)

results or consequences thereof, past or future, or for injury or damage to all or any of both or either of the parcels of real property described in said lease of September 17, 1934, or any of the appurtenances thereto, fixtures thereon or personal property located thereon or used in connection therewith, together with any and all claims heretofore made or which might have been made on account of anything done, omitted or suffered or alleged to have been done, omitted or suffered by the lessee with respect to the terms of the said lease of September 17, 1934, including claims now unknown to the undersigned as well as known claims; and the undersigned does specifically agree that the said Pacific Coast Borax Company, as lessee of said lease, has performed all of the obligations thereof on its part to be performed, and does release and discharge said Pacific Coast Borax Company, said Borax Consolidated, Ltd., their and each of their stockholders, directors, officers, agents, servants, employees, attorneys-in-fact and attorneys at law, of and from any and all claims, known or unknown, which may now exist or be claimed to exist in favor of the undersigned, as lessor of said lease, against said Pacific Coast Borax Company and said Borax Consolidated, Ltd., or any of them, or against all or any of the stockholders, directors, officers, agents, servants, employees, attorneys-in-fact and attorneys at law of both or either of them; and the undersigned does also release and discharge said Pacific Coast Borax Company and said Borax Consolidated,

## Exhibit No. 12—(Continued)

Ltd., and their and each of their stockholders, directors, officers, agents, servants, employees, attorneys-in-fact and attorneys at law of and from any and all causes of action, claims and demands, whether or not well founded in fact or in law, for or on account of the use of the passageways, shaft and other facilities of the mine in said Parcel 1 of said lease for the transportation and lifting of ore mined in premises of Borax Consolidated, Ltd., adjoining the said Parcel 1 and for any other act of commission or omission in or pertaining to the use or occupation of the said leased premises.

It is the specific intent and purpose hereof to release and discharge any and all claims, demands and causes of action of any kind or nature whatsoever, whether known or unknown and whether specifically mentioned herein or not, which may exist or which might be claimed to exist at or prior to delivery hereof in favor of the undersigned as lessor of said lease or in any other capacity, against all or any of the above mentioned corporations and individuals; and the undersigned specifically waives any right or claim of right to hereafter assert that any cause of action or alleged cause of action or claim or demand of any nature or kind whatsoever has been through oversight or error or intentionally or unintentionally omitted from this release.

In Witness Whereof, said Suckow Borax Mines Consolidated, Inc. has caused this instrument to be executed by its corporate officers first thereunto



Exhibit No. 12—(Continued)

duly authorized and its corporate seal to be hereunto affixed, this 21st day of December, 1942.

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation,

By /s/ RUTH Y. SUCKOW  
President

Attest:

/s/ PAUL O. TOBELER  
Secretary

State of California,  
County of Los Angeles—ss.

On this 21st day of December, 1942, before me, the undersigned, a Notary Public in and for the said county and state, residing therein, duly commissioned and sworn, personally appeared Ruth Y. Suckow, known to me to be the President, and Paul O. Tobeler, known to me to be the Secretary of Suckow Borax Mines Consolidated, Inc., the corporation which executed the within and annexed instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

(Seal) /s/ ROLLAND RICH WOOLLEY,  
Notary Public in and for said County and State.



## EXHIBIT No. 13

I.R.S. \$374.00 Cancelled.

## CORPORATION GRANT DEED

Suckow Borax Mines Consolidated, Inc., a corporation organized under the laws of the State of Delaware, with its principal place of business at Los Angeles, California, in consideration of Ten Dollars (\$10.00) and other valuable consideration, to it in hand paid, receipt of which is hereby acknowledged, does hereby grant to Borax Consolidated, Ltd., an English corporation, the real property in the County of Kern, State of California, described as

Parcel No. 1: An undivided half interest in and to the Southwest quarter and the West one-half of the Southeast quarter of Section 14, Township 11 North, Range 8 West, S.B.B.&M., in the County of Kern, State of California; and

Parcel No. 2: The West one-half of the West one-half of the Northeast quarter of Section 14, Township 11 North, Range 8 West, S. B. B. & M.; and a strip of land 200 feet in width adjoining on the West the last described parcel and constituting the Easterly 200 feet of the East one-half of the Northwest quarter of said Section 14, Township 11 North, Range 8 West, S.B.B.&M.;

In Witness Whereof, said Corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its President and

Exhibit No. 13—(Continued)

Secretary thereunto duly authorized, this 21st day of December, 1942.

(Seal)                      SUCKOW BORAX MINES CONSOLIDATED, INC.,

By RUTH SUCKOW,  
President,

By PAUL O. TOBELER,  
Secretary.

State of California,  
County of Los Angeles—ss.

On this 21 day of December, 1942, before me Rolland Rich Woolley, a Notary Public in and for said County, personally appeared Ruth Y. Suckow known to me to be the President, and Paul O. Toe-beler known to me to be the Secretary of Suckow Borax Mines Consolidated, Inc., the corporation that executed the within and foregoing instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

(Seal of Ann Cunningham.)

ROLLAND RICH WOOLLEY,  
Notary Public in and for said County and State.

CERTIFICATE

Know All Men by These Presents that on the 21st day of December, 1942, the Board of Directors of

## Exhibit No. 13—(Continued)

the Suckow Borax Mines Consolidated, Inc., did pass a resolution authorizing the sale of the following described real property together with certain personal property, to the Borax Consolidated, Ltd., an English Corporation, for and in consideration of \$350,000.00, payable \$300,000.00 cash and \$50,000.00 on March 31, 1943, and providing for the release of all claim and interest of Suckow Borax Mines Consolidated, Inc., in and to said property and in and to any leases affecting the same.

Parcel No. 1: An undivided half interest in and to the Southwest quarter and the West one-half of the Southeast quarter of Section 14, Township 11 North, Range 8 West, S. B. B. & M., in the County of Kern, State of California; and

Parcel No. 2: The West one-half of the West one-half of the Northeast Quarter of Section 14, Township 11 North, Range 8 West, S. B. B. & M.; and a strip of land 200 feet in width adjoining on the West the last described parcel and constituting the Easterly 200 feet of the East one-half of the Northwest quarter of said Section 14, Township 11 North, Range 8 West, S. B. B. & M.;

That approval of said resolution was made by written consent of the shareholders of the Suckow Borax Mines, Consolidated, Inc., who are entitled to exercise a majority of the voting power of said corporation.

Exhibit No. 13—(Continued)

Dated: December 23rd, 1942.

(Seal)                      PAUL O. TOBELER,  
Secretary of Suckow Borax Mines Consolidated, Inc.

Recorded at Request of Title Insurance & Trust  
Co. Dec. 29, 1942 at 9 a.m. in Book 1111 of Official  
Records, Page 327 Kern County Records.

CHAS. H. SHOMATE,  
Recorder,

By FRANCES AHMANN,  
Deputy Recorder.

Compared by C. Bandussi. Checked by E. Renz.

---

EXHIBIT No. 14

[Title Insurance and Trust Company Letterhead]  
433 South Spring Street, Los Angeles

[Stamp]: Received Jan. 4, 1943, Newlin & Ash-  
burn.

Escrow No. 1856404 RG

January 2, 1943

Pacific Coast Borax Company,  
c/o Newlin & Ashburn,  
601 West 5th St., Los Angeles, California.

Gentlemen:

Your escrow with Suckow Borax Mines Con-  
solidated Inc.

This escrow was closed on December 29, 1942, and  
in accordance with the instructions we enclose:

1. Policy of title insurance No. 76004-K issued

Exhibit No. 14—(Continued)

through our Kern County office with liability of \$340,000.00,

2. Bill of Sale dated December 21, 1942, executed by Suckow Borax Mines Consolidated, Inc., in favor of your Corporation,

3. General Release of All Claims dated December 21, executed by Suckow Borax Mines Consolidated, Inc.,

4. Certified copy of Resolution of Board of Directors of your seller,

5. Certified copy of Minutes of the meeting of the Board of Directors of your seller,

6. Written Consent of stockholders of your seller authorizing the sale of real and personal property,

7. Photostatic copy of lease dated September 17, 1934, between Suckow Borax Mines Consolidated, a corporation, and Hubert F. Laugharn, as trustee,

8. Our checks for \$122.88 and \$12.36, together with statement of your account.

Your deed and recorded copy of surrender of lease will be sent to you direct by the Kern County Recorder.

Very truly yours,

/s/ R. GORMAN,

RG EO

Escrow Department.



EXHIBIT NO. 15

CONSENT OF STOCKHOLDERS OF SUCKOW  
BORAX MINES CONSOLIDATED, INC., TO  
RELEASE.

Los Angeles, California

December 21, 1942

Suckow Borax Mines Consolidated, Inc.

40 Saint James Park,

Los Angeles, California.

Gentlemen:

The undersigned have carefully examined the attached, proposed escrow instructions of Pacific Coast Borax Company, a Nevada corporation, which for all intents and purposes are hereby made a part of this consent and approval instrument, and for the purposes of this instrument are known as Exhibit A.

From a careful examination of said instrument the undersigned understand that the Pacific Coast Borax Company, a Nevada corporation, desires to purchase from you all of the real property described in said Exhibit A, together with all of the personal property referred to in said Exhibit A and more particularly described in schedule "A" which is attached to that certain lease dated as of September 17th, 1934, referred to in said Exhibit A, and to pay therefor the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) on or before December 28th, 1942 in the following manner: The sum of Three Hundred Thousand Dollars (\$300,000.00) in cash, and the additional Fifty

## Exhibit No. 15—(Continued)

Thousand Dollars (\$50,000.00) to be evidenced by a promissory note in your favor, payable on or before March 31st, 1943.

The undersigned, as stockholders in the Suckow Borax Mines Consolidated, Inc., a corporation, hereby recommend that you immediately do or cause to be done any and all acts and things as are necessary as to immediately accept and consummate a sale of said real and personal property for said consideration within said time; and the undersigned, jointly and severally, hereby consent to said sale for said consideration to be payable in the manner as stated aforesaid and do hereby, jointly and severally, ratify and approve any and all action which may be taken by the Board of Directors of the Suckow Borax Mines Consolidated, Inc., a corporation, in accepting said offer and in consummating said sale and in executing all papers pertaining thereto and in doing or causing to be done any and all things which are necessary to consummate said escrow and said sale.

Each of the undersigned do hereby certify that he has read the attached Exhibit A, in addition to the foregoing contents of this instrument, and that he is thoroughly familiar with the contents thereof and that each of the undersigned is exercising his free and independent judgment in the matter.

The undersigned further certify that they are the owners of record of more than ninety-eight per cent (98%) of all of the issued and outstanding

## Exhibit No. 15—(Continued)

common capital stock of Suckow Borax Mines Consolidated, Inc., a corporation, organized and existing under and by virtue of the laws of the State of Delaware and lawfully doing business within the State of California.

Stockholder	Date	No. of Shares
ESTATE OF DR. JOHN K. SUCKOW,		
By /s/ Paul Tobeler,	December 21, 1942	31,628
Special Administrator		
/s/ Mrs. Ruth Suckow	December 21, 1942	15,863
/s/ Joseph Jensen	December 21, 1942	2,569
/s/ Mrs. Lois W. Jensen	December 21, 1942	2,503

## EXHIBIT "A"

## ESCROW INSTRUCTIONS

Escrow Number . . . . . December 20, 1942

Title Insurance and Trust Company,  
433 South Spring Street,  
Los Angeles, California  
Gentlemen:

The undersigned, Pacific Coast Borax Company, a Nevada corporation, hereinafter described as "Buyer," delivers to you as escrow holder the following document:

1. Surrender of lease between Suckow Borax Mines Consolidated, Inc. and Pacific Coast Borax Company, dated September 17, 1934, and recorded October 2, 1934, in Book 542, at page 176 of Official Records of Kern County, California, which said lease covers premises described as follows:

Parcel 1: An undivided half interest in and to the southwest quarter and the west one-half of

## Exhibit No. 15—(Continued)

the southeast quarter of Section 14, Township 11 North, Range 8 West, S.B.B. & M., in the County of Kern, State of California; and

Parcel 2: The west one-half of the west one-half of the northeast quarter of Section 14, Township 11 North, Range 8 West, S.B.B. & M.; and a strip of land 200 feet in width adjoining on the west the last described parcel and constituting the easterly 200 feet of the east one-half of the northwest quarter of said Section 14, Township 11 North, Range 8 West, S.B.B.&M.; said surrender of lease is in the form hereunto annexed as Exhibit "A."

Upon receipt at any time prior to January 1, 1943, of notice from you that you are ready to close this escrow, buyer will deliver to you as escrow holder, within twenty-four hours thereafter, the following:

(a) \$300,000 and one promissory note made by the undersigned payable to Suckow Borax Mines Consolidated, Inc., or order, for the sum of \$50,000 payable March 31, 1943, which said note shall be in the form hereunto annexed as Exhibit "B";

(b) Certified copy of resolution of the Board of Directors of buyer authorizing the purchase of the above described property at the price and upon the terms herein set forth and the execution and delivery of the foregoing surrender of lease, together with certified copy of Minutes of the meeting of said Board of Directors at which said resolution was passed.



Exhibit No. 15—(Continued)

You are authorized to pay or use said money and deliver said notes to or on the order of the said Suckow Borax Mines Consolidated, Inc., provided you have received, prior to January 1, 1943, for delivery to buyer through this escrow, the following documents and are in position to issue policy of title insurance hereinafter mentioned:

(a) Grant deed duly executed by seller (said Suckow Borax Mines Consolidated, Inc.) conveying to Borax Consolidated, Ltd., an English corporation, all of the real property hereinbefore described, with certificate attached thereto conforming to the provisions of Section 343b of the Civil Code of California;

(b) Bill of sale executed by seller and transferring and conveying to buyer all of the personal property described in Schedule "A" attached to said lease of September 17, 1934, together with any renewals or replacements thereof, and any other personal property belonging to or claimed by seller and now located upon or in any of the real property hereinbefore described, which said bill of sale shall be in the form hereto annexed as Exhibit "C";

(c) Duplicate of the above mentioned surrender of lease of September 17, 1934, in the form of Exhibit "A" attached hereto duly executed by said Suckow Borax Mines Consolidated, Inc. (which duplicate buyer will also execute after delivery by seller into escrow and before recordation thereof);

(d) General release of all claims of seller against



## Exhibit No. 15—(Continued)

buyer and said Borax Consolidated, Ltd., their and each of their officers, agents, servants, employees and representatives, which said release shall be in the form of Exhibit "D" attached hereto and duly executed by said Suckow Borax Mines Consolidated, Inc.;

(e) Certified copy of resolution of Board of Directors of seller authorizing the sale of all of the above mentioned real and personal property and the execution and delivery of said grant deed, bill of sale, surrender of lease, general release and other instruments to be delivered to buyer through escrow, together with certified copy of Minutes of the meeting of said Board of Directors at which said resolution was passed; and

(f) Written consent of stockholders of seller authorizing the sale of all of the above mentioned real and personal property for the price and upon the terms herein mentioned, in such form as may be necessary to comply with Section 343 of the Civil Code of California and duly executed by shareholders of seller entitled to exercise a majority of the voting power of such corporation, or such larger proportion of shareholders, or of any class or classes of shareholders, as may be required by the Articles of Incorporation of said seller corporation.

When you are in position:

(a) To issue your policy of title insurance showing good title to all of the above described real property vested in said Borax Consolidated, Ltd.,

Exhibit No. 15—(Continued)

free and clear of defects therein or encumbrances thereon, except the lien of county taxes, with liability limited to \$350,000 and in the form customarily issued by you (but eliminating the phrase "mining claims" from policy exceptions and including any specific provisions which may be necessary to protect buyer against Federal liens of record); and

(b) To comply with all the other requirements of these instructions,

you are authorized and directed to close the escrow, record said deed and surrender of lease and cause same to be later delivered to buyer; you will also deliver to the undersigned upon close of escrow said bill of sale, general release, certified copy of resolution of Board of Directors and written consent of stockholders of seller, together with said policy of title insurance and any other papers deposited by seller as hereinbefore set forth; you will also deliver to seller the said surrender of lease first herein mentioned, together with said certified copy of resolution and minutes of the Board of Directors of buyer corporation, and will pay to or upon the order of the said seller the said sum of \$300,000 and deliver to it or on its order the said promissory note.

The undersigned will pay your charge for said policy of title insurance, all escrow charges and other incidental expenses of this escrow.

If you are unable to comply with these instruc-

Exhibit No. 15—(Continued)

tions prior to January 1, 1943, this escrow shall automatically expire without further notice and all money and documents deposited by buyer shall be returned forthwith to it and without the necessity of any formal demand therefor or notice of termination of escrow.

The office address of buyer, Pacific Coast Borax Company, is Associated Realty Building, Los Angeles, California, and you may communicate with it through its attorney, A. W. Ashburn, of the firm of Newlin & Ashburn, whose office is 1020 Edison Building, Los Angeles California, and whose telephone number is MUtual 7205.

PACIFIC COAST BORAX COMPANY,

By .....  
President

Attest:

.....  
Assistant Secretary  
Buyer

SURRENDER OF LEASE

This Agreement, made at Los Angeles, California, this.....day of December, 1942, between Suckow Borax Mines Consolidated, Inc., a Delaware corporation, hereinafter designated as "Lessor," and Pacific Coast Borax Company, a Nevada corporation, hereinafter designated as "Lessee,"

Witnesseth:

Whereas, the parties hereto are respectively lessor and lessee of a certain lease entered into under

Exhibit No. 15—(Continued)

date of September 17, 1934, between said Suckow Borax Mines Consolidated, Inc., a Delaware corporation, and Hubert F. Laugharn, as Trustee in Bankruptcy of the Estate of said Suckow Borax Mines Consolidated, Inc., as joint lessors, and said Pacific Coast Borax Company, as lessee; and

Whereas, said Suckow Borax Mines Consolidated, Inc. had been adjudged a bankrupt prior to the making of said lease of September 17, 1934, and the said bankruptcy proceeding was subsequently terminated and dismissed, and said Suckow Borax Mines Consolidated, Inc. thereupon became and now is the sole lessor of and under said lease of September 17, 1934; and

Whereas, the parties hereto have agreed to cancel and terminate the said lease;

Now, Therefore, it is hereby mutually agreed as follows:

1. That the lessee hereby remises, releases, quit-claims and surrenders to the lessor, its successors and assigns forever, all of the premises described in the aforesaid lease, together with the appurtenances and all of the estate and rights of the lessee in and to the said lease and premises.

To Have and To Hold the same unto the lessor, its successors and assigns forever, from and after date of delivery hereof.

This surrender is made with the intent that the said lease and the rights of the lessee thereunder shall merge in the fee of said premises.

2. That the lessor hereby accepts the foregoing

Exhibit No. 15—(Continued)

surrender and hereby releases lessee, and lessee hereby releases lessor, of and from any and all obligation to perform any of the terms of said lease from and after date of delivery hereof and of and from any and all claims, demands and causes of action whatsoever not arising out of or under this agreement of surrender.

In Witness Whereof, the parties hereto have caused this instrument to be executed by their corporate officers first thereunto duly authorized and the respective corporate seals to be hereunto affixed the day and year first above written.

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation,

By RUTH Y. SUCKOW,  
President

Attest:

PAUL O. TOBELER  
Secretary  
Lessor

PACIFIC COAST BORAX COMPANY,  
a corporation,

By F. M. JENIFER  
President

Attest:

M. J. BARCLAY  
Asst. Secretary  
Lessee

(To be duly acknowledged)



Exhibit No. 15—(Continued)

EXHIBIT "B"

PROMISSORY NOTE

\$50,000.00

Los Angeles, California, December . . . ., 1942.

On or before March 31, 1943, and for value received, the undersigned promises to pay to Suckow Borax Mines Consolidated, Inc., or order, at the office of the undersigned in the Associated Realty Building, Los Angeles, California, the sum of Fifty Thousand and No/100ths Dollars, without interest.

The undersigned further promises to pay all costs of collection, including attorneys' fees, which may be incurred in the collection of this note, or any portion thereof, and, in case suit is instituted for such purpose, the amount of such attorneys' fees shall be such amount as the court shall adjudge reasonable.

PACIFIC COAST BORAX COMPANY,  
a corporation,

By .....  
President

Attest:

.....  
Asst. Secretary

## Exhibit No. 15—(Continued)

## EXHIBIT "C"

## BILL OF SALE

Be It Known, That the undersigned, Suckow Borax Mines Consolidated, Inc., a Delaware corporation, as party of the first part, for valuable consideration to it in hand paid by Pacific Coast Borax Company, a Nevada corporation, as party of the second part, receipt of which consideration is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, its successors and assigns, all of the personal property described in Schedule "A" attached to that certain lease dated September 17, 1934, between Suckow Borax Mines Consolidated, Inc., a Delaware corporation, and Hubert F. Laugharn, as Trustee in Bankruptcy of the Estate of the said Suckow Borax Mines Consolidated, Inc., as parties of the first part and lessors, and Pacific Coast Borax Company, a Nevada corporation, as party of the second part and lessee, which said lease was recorded on October 2, 1934, in Book 542, at page 176 of Official Records of Kern County, California, and covers the following described premises:

Parcel 1: An undivided half interest in and to the southwest quarter and the west one-half of the southeast quarter of Section 14, Township 11 North, Range 8 West, S.B.B. & M., in the County of Kern, State of California; and

Exhibit No. 15—(Continued)

Parcel 2: The west one-half of the west one-half of the northeast quarter of Section 14, Township 11 North, Range 8 West, S.B.B. & M.; and a strip of land 200 feet in width adjoining on the west the last described parcel and constituting the easterly 200 feet of the east one-half of the northwest quarter of said Section 14, Township 11 North, Range 8 West, S.B.B. & M.;

together with any renewals or replacements of the said or any of the said personal property so described in said Schedule "A" and any other personal property belonging to or claimed by the party of the first part hereto and now located upon any of the real property hereinbefore described.

To Have and To Hold the same unto the said party of the second part, its successors and assigns, forever.

And the party of the first part does for itself, its successors and assigns, covenant and agree to and with the said party of the second part, its successors and assigns, to warrant and defend the sale of the said property, goods and chattels hereby made unto the said party of the second part, its successors and assigns, against all and every person or persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof, said Suckow Borax Mines Consolidated, Inc. has caused this instrument to be executed by its corporate officers first thereunto

Exhibit No. 15—(Continued)

duly authorized and its corporate seal to be here-  
unto affixed, this.....day of December, 1942.

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation,

By RUTH Y. SUCKOW  
President

Attest:

PAUL O. TOBELER  
Secretary

(To be duly acknowledged)

EXHIBIT "D"

GENERAL RELEASE OF ALL CLAIMS

Know All Men by These Presents:

That the undersigned, Suckow Borax Mines Consolidated, Inc., a Delaware corporation, for valuable consideration to it in hand paid, receipt of which is hereby acknowledged, has released and forever discharged, and by these presents does for itself, its successors and assigns, release and forever discharge Pacific Coast Borax Company, a Nevada corporation, Borax Consolidated, Ltd., an English corporation, and their and each of their stockholders, directors, officers, agents, servants, employees, attorneys-in-fact and attorneys at law, of and from any and all actions and causes of action, claims and demands whatsoever, whether or not well founded in fact or in law, and of and from any and all and all manner of suits, debts, dues,

## Exhibit No. 15—(Continued)

sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity which against the said corporations, or either of them, or against all or any of the stockholders, directors, officers, agents, servants, employees, attorneys-in-fact or attorneys at law of them, or either of them, the undersigned has had or now has or which it or its successors or assigns hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever, whether herein specifically mentioned or otherwise, from the beginning of the world to the date of these presents; and full satisfaction of all of said claims, demands, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, trespasses, damages, judgments and executions, is hereby acknowledged.

Without limiting the generality of the foregoing release, the undersigned does for itself, its successors and assigns, release and forever discharge said Pacific Coast Borax Company, Borax Consolidated, Ltd., their and each of their stockholders, directors, officers, agents, servants, employees, attorneys-in-fact and attorneys at law, of and from any and all causes of action, claims and demands whatsoever, whether or not well founded in fact or in law, for or on account of any injury or damage to the mine in that certain real property described as Parcel 1



## Exhibit No. 15—(Continued)

in lease of September 17, 1934, between Suckow Borax Mines Consolidated, Inc., a Delaware corporation, and Hubert F. Laugharn, as Trustee in Bankruptcy of the Estate of said Suckow Borax Mines Consolidated, Inc., as joint lessors, and said Pacific Coast Borax Company, as lessee, which was recorded October 2, 1934, in Book 542, at page 176 of Official Records of Kern County, California, and of and from any and all claims for liability for damage, loss or expense growing or claimed to have grown out of or to have been proximately caused by the caving of the mine in the said Parcel 1 and of and from any liability from the results or consequences thereof, past or future, or for injury or damage to all or any of both or either of the parcels of real property described in said lease of September 17, 1934, or any of the appurtenances thereto, fixtures thereon or personal property located thereon or used in connection therewith, together with any and all claims heretofore made or which might have been made on account of anything done, omitted or suffered or alleged to have been done, omitted or suffered by the lessee with respect to the terms of the said lease of September 17, 1934, including claims now unknown to the undersigned as well as known claims; and the undersigned does specifically agree that the said Pacific Coast Borax Company, as lessee of said lease, has performed all of the obligations thereof on its part to be performed, and does release and discharge said Pacific Coast Borax Company, said

## Exhibit No. 15—(Continued)

Borax Consolidated, Ltd. their and each of their stockholders, directors, officers, agents, servants, employees, attorneys-in-fact and attorneys at law, of and from any and all claims, known or unknown, which may now exist or be claimed to exist in favor of the undersigned, as lessor of said lease, against said Pacific Coast Borax Company and said Borax Consolidated, Ltd., or any of them, or against all or any of the stockholders, directors, officers, agents, servants, employees, attorneys-in-fact and attorneys at law of both or either of them; and the undersigned does also release and discharge said Pacific Coast Borax Company and said Borax Consolidated, Ltd. and their and each of their stockholders, directors, officers, agents, servants, employees, attorneys-in-fact and attorneys at law of and from any and all causes of action, claims and demands, whether or not well founded in fact or in law, for or on account of the use of the passageways, shaft and other facilities of the mine in said Parcel 1 of said lease for the transportation and lifting of ore mined in premises of Borax Consolidated, Ltd. adjoining the said Parcel 1 and for any other act of commission or omission in or pertaining to the use or occupation of the said leased premises.

It is the specific intent and purpose hereof to release and discharge any and all claims, demands and causes of action of any kind or nature whatsoever, whether known or unknown and whether specifically mentioned herein or not, which may

Exhibit No. 15—(Continued)

exist or which might be claimed to exist at or prior to delivery hereof in favor of the undersigned as lessor of said lease or in any other capacity, against all or any of the above mentioned corporations and individuals; and the undersigned specifically waives any right or claim of right to hereafter assert that any cause of action or alleged cause of action or claim or demand of any nature or kind whatsoever has been through oversight or error or intentionally or unintentionally omitted from this release.

In Witness Whereof, said Suckow Borax Mines Consolidated, Inc. has caused this instrument to be executed by its corporate officers first thereunto duly authorized and its corporate seal to be hereunto affixed, this.....day of December, 1942.

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation,

By RUTH Y. SUCKOW  
President

Attest:

PAUL O. TOEBLER  
Secretary

(To be duly acknowledged)

[Endorsed]: Filed Feb. 2, 1948.

[Title of District Court and Cause.]

NOTICE OF MOTIONS OF DEFENDANT,  
AMERICAN POTASH & CHEMICAL COR-  
PORATION, TO DISMISS THE COM-  
PLAINT, FOR SUMMARY JUDGMENT AND  
TO STRIKE PARTS OF THE COMPLAINT.

To Sterling Carr, Esq., and Thurman Arnold, Esq.:  
Attorneys for Plaintiffs.

Please Take Notice that on Monday, the 16th day  
of February, 1948, at 10 o'clock in the forenoon  
or as soon thereafter as counsel can be heard, in  
the Court Room of the above-entitled court before  
Honorable Michael J. Roche, District Judge, in the  
Post Office Building in the City and County of San  
Francisco, State of California, the defendant,  
American Potash & Chemical Corporation, will  
make the following motions:

I.

Motion To Dismiss the Complaint on the Ground  
That the Action Is Barred by the Statute of  
Limitations.

This defendant moves to dismiss the complaint  
as to each of the plaintiffs on the following grounds:

1. That the action is barred by the Statute of  
Limitations.

2. That the action is barred by the provisions  
of Subdivision (1) of Section 338 of the California  
Code of Civil Procedure.

3. That the action is barred by the provisions of Subdivision (4) of Section 338 of the California Code of Civil Procedure.

4. That the claims for relief alleged in the complaint are barred in that they did not accrue within three years next before the commencement of the action but accrued, if at all, prior to said three years.

5. That the claims for relief alleged in the complaint are barred in that they did not accrue on or after October 11, 1943 but accrued, if at all, prior to said date.

6. That the claims for relief alleged in the complaint are barred in that they did not accrue on or after December 21, 1940 but accrued, if at all, prior to said date.

## II.

Motion To Dismiss as to Suckow Borax Mines, Consolidated, Inc., on the Ground That the Action Is Barred by the Statute of Limitations.

In the alternative, if the foregoing motion is denied, this defendant moves to dismiss as to the plaintiff, Suckow Borax Mines Consolidated, Inc., each of the claims for relief alleged by said plaintiff in paragraphs 82 to 94, inclusive, of the complaint on the following grounds:

1. That said claims for relief are barred by the statute of limitations.

2. That said claims for relief are barred by the



provisions of Subdivision (1) of Section 338 of the California Code of Civil Procedure.

3. That said claims for relief are barred by the provisions of Subdivision (4) of Section 338 of the California Code of Civil Procedure.

4. That the claims for relief alleged in said paragraphs of the complaint on behalf of said plaintiff are barred in that they did not accrue within three years next before the commencement of the action but accrued, if at all, prior to said three years.

5. That the claims for relief alleged in said paragraphs of the complaint on behalf of said plaintiff are barred in that they did not accrue on or after October 11, 1943 but accrued, if at all, prior to said date.

6. That the claims for relief alleged in said paragraphs of the complaint on behalf of said plaintiff are barred in that they did not accrue on or prior to December 21, 1940 but accrued, if at all, prior to said date.

### III.

#### Motion for Summary Judgment.

In the alternative, if the foregoing motions are denied, this defendant moves for summary judgment on the ground that there is no genuine issue as to any material fact and that this defendant is entitled to a judgment as a matter of law. For the purpose of this motion, this defendant joins in the motions for summary judgment of the defendants, Borax Consolidated, Ltd., Pacific Coast Borax

Company, and United States Borax Company, and the affidavits and exhibits accompanying the said motions.

#### IV.

##### Motion To Dismiss on the Ground That the Complaint Fails to State a Claim for Relief.

In the alternative, if the foregoing motions are denied, this defendant moves to dismiss the complaint with respect to each of the claims alleged by each of the plaintiffs on the ground that the complaint fails to state a claim upon which relief can be granted.

#### V.

##### Motion To Strike Parts of the Complaint.

In the alternative, if the foregoing motions are denied, this defendant moves to strike the following portions of the complaint on the ground that they are, and each of them is, redundant, immaterial and impertinent matter:

1. The last sentence of paragraph 10 of the complaint;
2. All of paragraphs 79 to 82, inclusive of the complaint;
3. All of paragraph 83 of the complaint, and severally the following portions of paragraph 83, namely:
  - (1) Subdivision (a) thereof;
  - (2) Lines 8-21, inclusive, on page 43;

(3) Subdivision (c) thereof to and including the word "result" on line 28, page 45;

(4) Subdivision (d) thereof to and including the word "result" on line 29, page 46;

(5) Subdivision (f) thereof;

(6) Subdivision (g) thereof.

4. All of paragraphs 84 to 94, inclusive, of the complaint.

Dated: February 2, 1948

OLIVER & DONNALLY

By /s/ MICHAEL F. McCARTHY  
FULTON, WALTER & HALLEY

By /s/ JOSEPH W. BURNS

/s/ CHARLES A. BEARDSLEY  
Attorneys for Defendant, American Potash  
& Chemical Corporation.

(Acknowledgment of Service.)

[Endorsed]: Filed Feb. 2, 1948.

[Title of District Court and Cause.]

Notice of Motions of Bank of America National Trust & Savings Association, as Executor of the Last Will and Testament of Clarence McAniffe Rasor, Deceased, to Quash Service of Summons and to Dismiss for Improper Venue, to Dismiss for Failure to State a Claim upon Which Relief May Be Granted, to Dismiss Because the Action Is Barred by the Statute of Limitations, and to Strike.

To Suckow Borax Mines Consolidated, Inc., Mojave Borax Company, Ltd., Paul O. Tobeler, Executor of the Last Will and Testament of John K. Suckow, Deceased, Ruth E. Suckow, Plaintiffs herein, and to Thurman W. Arnold, Esq., and Sterling Carr, Esq., Attorneys for Plaintiffs:

Please Take Notice, hereby given, that on Monday, the 16th day of February, 1948, at the hour of 10 o'clock A.M., or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled court, before the Honorable Michael J. Roche, District Judge, in the Post Office Building in the City and County of San Francisco, State of California, Bank of America National Trust & Savings Association, a corporation, as Executor of the Last Will and Testament of Clarence McAniffe Rasor, Deceased, hereafter referred to for convenience as Bank of America N. T. & S. A. as Executor, named as a defendant herein, will appear specially for the sole purpose of making the following motions and not otherwise and, so appearing, will move the court as follows:

## I.

To Quash Purported Service of Summons made on it on October 1, 1947 in the City of Los Angeles, State of California, and to Dismiss the Action as Against It for Improper Venue, that is, on the ground that it may not be sued in the Northern District of California because (a) jurisdiction of this Court is invoked solely on the ground that the action arises under the laws of the United States, to wit, the Antitrust Laws of the United States as set forth in Title 15 United States Code, and (b) at the time of and at all times since the commencement of this action the Estate of Clarence McAniffe Rasor, Deceased, was and is being administered in the Superior Court of the State of California, in and for the County of Los Angeles, and Bank of America National Trust & Savings Association, as and in its capacity as Executor of the Estate of Clarence McAniffe Rasor, was, ever since has been, and now is, a resident and inhabitant of the City of Los Angeles, County of Los Angeles, in the Southern District of California, and not a resident or inhabitant of the Northern District of California or found therein, and at no such time has had or now has an agent in the Northern District of California.

## II.

In the alternative, and if the foregoing motion is denied, To Dismiss the action with respect to the claims asserted by each plaintiff as against Bank of America N. T. & S. A. as Executor on the ground that the complaint fails to state a claim on which



relief can be granted to said plaintiff against it; said motion will be made severally as respects each plaintiff.

### III.

In the alternative, if the motion to dismiss for improper venue is denied, To Dismiss the action as against Bank of America N. T. & S. A. as Executor and as respects the claims of each of the plaintiffs on the following grounds:

1. That the action on behalf of each of said plaintiffs is barred by the Statute of Limitations.

2. That the action on behalf of each of said plaintiffs is barred by the provisions of Subdivision (1) of Section 338 of the California Code of Civil Procedure.

3. That the action on behalf of each of said plaintiffs is barred by the provisions of Subdivision (4) of Section 338 of the California Code of Civil Procedure.

4. That the rights of action set forth in the complaint on behalf of each of said plaintiffs did not accrue within three years next before the commencement of the action but accrued, if at all, prior to said three years and are therefore barred by the Statute of Limitations.

5. That the rights of action set forth in the complaint on behalf of each of said plaintiffs did not accrue on or after October 11, 1943 but accrued, if at all, prior to said date and are therefore barred by the Statute of Limitations.

6. That the rights of action set forth in the complaint on behalf of said plaintiffs did not accrue

on or after December 21, 1940 but accrued, if at all, prior to said date and are therefore barred by the Statute of Limitations.

Said motion will be made severally as respects each plaintiff.

#### IV.

In the alternative, and in the event that none of the foregoing motions is granted with respect to each plaintiff, To Dismiss as against Bank of America N. T. & S. A. as Executor each of the claims for relief and causes of action asserted by the plaintiffs in paragraphs 79, 80 and 82 to 94, inclusive, and each of said paragraphs on the following grounds:

1. That said claims for relief and causes of action are barred by the Statute of Limitations.

2. That said claims for relief and causes of action are barred by the provisions of Subdivision (1) of Section 338 of the California Code of Civil Procedure.

3. That said claims for relief and causes of action are barred by the provisions of Subdivision (4) of Section 338 of the California Code of Civil Procedure.

4. That the rights of action set forth in said portions of the complaint on behalf of said plaintiffs did not accrue within three years next before the commencement of the action but accrued, if at all, prior to said three years and are therefore barred by the Statute of Limitations.

5. That the rights of action set forth in said portions of the complaint on behalf of said plaintiffs did not accrue on or after October 11, 1943

but accrued, if at all, prior to said date and are therefore barred by the Statute of Limitations.

6. That the rights of action set forth in said portions of the complaint on behalf of said plaintiffs did not accrue on or after December 21, 1940 but accrued, if at all, prior to said date and are therefor barred by the Statute of Limitations.

Said motion will be made severally as respects each plaintiff.

## V.

In the alternative, and in the event that none of the foregoing motions is granted with respect to each plaintiff, To Grant a Summary Judgment for Bank of America N. T. & S. A. as Executor as against each plaintiff on the ground that there is no genuine issue as to any material fact, and that Bank of America N. T. & S. A. as Executor is entitled to a judgment as a matter of law.

## VI.

In the alternative, to Strike from the complaint the following allegations on the ground that they are and each of them is, redundant, immaterial and impertinent matter, to wit:

1. All the allegations of paragraphs 79-94, inclusive, and severally each and every one of the allegations contained in said paragraphs.

2. The words in subdivision (b) of paragraph 83, at lines 10 and 11 on page 43, "and by chicane and false testimony and by other devious means."

3. All of subdivision (c) of paragraph 83 down to, but not including, the words in lines 28 and 29

on page 45 reading, "on March 2, 1933, said Suckow Company was formally adjudged a bankrupt."

4. The words "Through false and fraudulent testimony" in line 22 on page 45 in subdivision (c) of paragraph 83.

5. All of subdivision (d) in paragraph 83 down to, but not including, the words in lines 29 and 30 on page 46 reading, "that on or about the 17th day of April, 1934 and after court proceedings to such end, a lease was granted \* \* \* ."

6. In subdivision (f) of paragraph 83 the first thirteen words reading, "Meanwhile, and in order further to harass said Suckow and said Suckow Company," and the words "said action was commenced with the idea of taking whatever action might be possible to complicate matters further for said Suckow and Suckow Company" in lines 6 to 8 on page 48.

7. All of subsection 8 of subdivision (g) of paragraph 83.

Each of the foregoing motions will be based on all the pleadings and papers on file herein, including this notice of motion. The motions other than the motion to quash service of summons and to dismiss for improper venue will be based on each and all of the affidavits, certified copies of documents and other papers filed herein on February 2, 1948 in support of motions of defendants Pacific Coast Borax Company, Borax Consolidated, Ltd., United States Borax Company, Frank M. Jenifer, and James M. Gerstley to dismiss for failure to state a claim upon which relief may be granted, to dismiss because the action is barred by the Statute of



Limitations, for a summary judgment, and to strike, to wit, the affidavit of Allen W. Ashburn executed January 15, 1948 and attached copy of an affidavit by John K. Suckow, affidavit of Albert H. Bargion executed January 21, 1948, and affidavit of Moses Lasky to which are attached fifteen documents as exhibits.

Date: San Francisco, February 2, 1948.

/s/ MAURICE E. HARRISON

/s/ MOSES LASKY

/s/ BROBECK, PHLEGER & HARRISON

Attorneys for Bank of America N. T. & S. A.  
as Executor, etc.

(Acknowledgment of Service.)

[Endorsed:] Filed Feb. 2, 1948.

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[Title of District Court and Cause.]

Notice of Motions of Defendants Pacific Coast Borax Company, Borax Consolidated, Ltd., United States Borax Company, Frank M. Jennifer, and James M. Gerstley to Dismiss for Failure to State a Claim upon Which Relief May Be Granted, to Dismiss Because the Action Is Barred by the Statute of Limitations, for a Summary Judgment, and to Strike.

To Suckow Borax Mines Consolidated, Inc., Mojave Borax Company, Ltd., Paul O. Tobeler, Executor of the Last Will and Testament of John K. Suckow, Deceased, Ruth E. Suckow, Plaintiffs herein, and to Thurman W. Arnold, Esq. and Sterling Carr, Esq., Attorneys for Plaintiffs:



Please Take Notice, hereby given, that on Monday, the 16th day of February, 1948, at the hour of 10 o'clock A.M., or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled court, before the Honorable Michael J. Roche, District Judge, in the Post Office Building in the City and County of San Francisco, State of California, defendants Pacific Coast Borax Company, Borax Consolidated, Ltd., United States Borax Company, Frank M. Jenifer, and James M. Gerstley will move the court as follows:

I.

To Dismiss the action with respect to the claims asserted by each plaintiff as against each of the moving defendants on the ground that the complaint fails to state a claim on which relief can be granted to said plaintiff against said defendant; said motion will be made severally as respects each plaintiff and each said defendant.

II.

To Dismiss the action as against each moving defendant and as respects the claims of each of the plaintiffs on the following grounds:

1. That the action on behalf of each of said plaintiffs is barred by the Statute of Limitations.

2. That the action on behalf of each of said plaintiffs is barred by the provisions of Subdivision (1) of Section 338 of the California Code of Civil Procedure.

3. That the action on behalf of each of said

plaintiffs is barred by the provisions of Subdivision (4) of Section 338 of the California Code of Civil Procedure.

4. That the rights of action set forth in the complaint on behalf of each of said plaintiffs did not accrue within three years next before the commencement of the action but accrued, if at all, prior to said three years and are therefore barred by the Statute of Limitations.

5. That the rights of action set forth in the complaint on behalf of each of said plaintiffs did not accrue on or after October 11, 1943 but accrued, if at all, prior to said date and are therefore barred by the Statute of Limitations.

6. That the rights of action set forth in the complaint on behalf of said plaintiffs did not accrue on or after December 21, 1940 but accrued, if at all, prior to said date and are therefore barred by the Statute of Limitations.

Said motion will be made severally as respects each plaintiff and each moving defendant.

### III.

In the alternative, and in the event that none of the foregoing motions is granted with respect to each plaintiff, To Dismiss as against each of the moving defendants each of the claims for relief and causes of action asserted by the plaintiffs in paragraphs 79, 80 and 82 to 94, inclusive, and each of said paragraphs, on the following grounds:

1. That said claims for relief and causes of action are barred by the Statute of Limitations.

2. That said claims for relief and causes of action

are barred by the provisions of Subdivision (1) of Section 338 of the California Code of Civil Procedure.

3. That said claims for relief and causes of action are barred by the provisions of Subdivision (4) of Section 338 of the California Code of Civil Procedure.

4. That the rights of action set forth in said portions of the complaint on behalf of plaintiffs did not accrue within three years next before the commencement of the action but accrued, if at all, prior to said three years and are therefore barred by the Statute of Limitations.

5. That the rights of action set forth in said portions of the complaint on behalf of said plaintiffs did not accrue on or after October 11, 1943 but accrued, if at all, prior to said date and are therefore barred by the Statute of Limitations.

6. That the rights of action set forth in said portions of the complaint on behalf of said plaintiffs did not accrue on or after December 21, 1940 but accrued, if at all, prior to said date and are therefore barred by the Statute of Limitations.

Said motion will be made severally as respects each plaintiff and each moving defendant.

#### IV.

In the alternative, and in the event that none of the foregoing motions is granted with respect to each plaintiff, To Grant a Summary Judgment for each moving defendant as against each plaintiff on the ground that there is no genuine issue as

to any material fact and that the moving parties are entitled to a judgment as a matter of law.

V.

In the alternative, To Strike from the complaint the following allegations on the ground that they are, and each of them is, redundant, immaterial and impertinent matter, to wit:

1. All the allegations of paragraphs 79-94, inclusive, and severally each and every one of the allegations contained in said paragraphs.

2. The words in subdivision (b) of paragraph 83, at lines 10 and 11 on page 43, "and by chicane and false testimony and by other devious means."

3. All of subdivision (c) of paragraph 83 down to, but not including, the words in lines 28 and 29 on page 45 reading, "on March 2, 1933 said Suckow Company was formally adjudged a bankrupt."

4. The words "Through false and fraudulent testimony" in line 22 on page 45 in subdivision (c) of paragraphs 83.

5. All of subdivision (d) in paragraph 83 down to, but not including, the words in lines 29 and 30 on page 46 reading, "that on or about the 17th day of April, 1934 and after court proceedings to such end, a lease was granted \* \* \* ."

6. In subdivision (f) of paragraph 83 the first thirteen words reading, "Meanwhile, and in order further to harass said Suckow and said Suckow Company," and the words "said action was commenced with the idea of taking whatever action might be possible to complicate matters further for said Suckow and Suckow Company" in lines 6 to 8 on page 48.



7. All of subsection 8 of subdivision (g) of paragraph 83.

Each of the foregoing motions will be based on all the pleadings and papers on file herein, including this notice of motion, and upon the following documents accompanying this motion:

1. Affidavit of Allen W. Ashburn executed January 15, 1948, to which is attached copy of affidavit of John K. Suckow presented on January 13, 1930 "In the Matter of the Application of Borax Consolidated, Ltd., a corporation, for Subpoena for Attendance of John K. Suckow Upon Taking his Deposition in the Case of Borax Consolidated, Ltd., a corporation, Plaintiff, vs. John K. Suckow, et al., Defendants, Now Pending in the Superior Court of the State of California, in and for the County of Kern, and No. 20694 on the Records Thereof," being Misc. No. 1469 in the records of the Superior Court of the State of California, in and for the County of Los Angeles.

2. Affidavit of Albert H. Bargion executed January 21, 1948.

3. Affidavit of Moses Lasky in support of motions of defendants, to which is attached the following documents:

(a) As Exhibit 1 thereto, certified copy of "Answer to Bill in Equity" filed by Suckow Borax Mines Consolidated, Inc., a corporation, John K. Suckow, et al. on or about July 15, 1930 in the District Court of the United States in and for the Southern District of California, Central Division, in a case entitled "Borax Consolidated, Ltd., a cor-



poration, plaintiff, vs. Suckow Borax Mines Consolidated, Inc., a corporation, John K. Suckow and N. V. Chemische Fabrik Gembo, a corporation," In Equity No. C-107-M.

(b) As Exhibit 2, certified copy of portion of "Answer to Bill in Equity as Amended," including the whole of the First Affirmative Defense, filed on or about December 8, 1932 in the above-mentioned action No. C-107-M by Suckow Borax Mines Consolidated, Inc. and John K. Suckow.

(c) As Exhibit 3, certified copy of portions of brief filed in said above-entitled equity suit No. C-107-M on December 28, 1933 by John K. Suckow entitled "Defendant John K. Suckow's Brief on Retrial of Cause."

(d) As Exhibit 4, certified copy of transcript of excerpts from printed "Hearings Before a Special Committee on Investigation of Bankruptcy and Receivership Proceedings in United States Courts from June 14 to November 22, 1933 (Seventy Third Congress, Second Session) Pursuant to S. Res. 78, Agreed to by the Senate on the Calendar Day of June 13, 1933, Authorizing the Appointment of a Special Committee to Investigate the Administration of Bankruptcy Proceedings in United States Courts."

(e) As Exhibit 5, certified copy of document entitled "Association of Attorneys" filed on January 12, 1934 in said above-mentioned case No. C-107-H (said case C-107-H being identical with case No. C-107-M).

(f) As Exhibit 6, certified copy of portions of document filed by John K. Suckow in said above-

mentioned equity suit No. C-107-M on January 25, 1934, entitled "Memorandum of John K. Suckow on the Findings of Fact and Conclusions of Law Proposed by Plaintiff."

(g) As Exhibit 7, certified copy of Separate Answer of Ruth E. Suckow, John K. Suckow, Suckow Borax Company, Ltd., Mojave Borax Company, Ltd. and Suckow Borax Mines Consolidated, Inc." to Bill in Equity filed July 18, 1934 in a suit in the District Court of the United States in and for the Southern District of California, Central Division, entitled "Borax Consolidated, Ltd., a corporation, plaintiff, v. Ruth E. Suckow (also known as Ruth Young, Ruth E. Young and Ruth Young Suckow), John K. Suckow, et al., defendants," No. 310-J.

(h) As Exhibit 8, photostatic copy of original document entitled "General Release of All Claims" executed on September 12, 1934 by John K. Suckow and Ruth E. Suckow.

(i) As Exhibit 9, photostatic copy of original document entitled "General Release of All Claims" executed on September 26, 1934 by Suckow Borax Mines Consolidated, Inc.

(j) As Exhibit 10, photostatic copy of original document entitled "General Release of All Claims" executed on September 26, 1934 by Mojave Borax Company, Ltd.

(k) As Exhibit 11, photostatic copy of original agreement entered into August 18, 1934 by and between John K. Suckow and Ruth E. Suckow (sometimes also known as Ruth Young Suckow, Ruth

Young and Ruth E. Young) as Sellers, and Pacific Coast Borax Company as Buyer.

(l) As Exhibit 12, photostatic copy of original document entitled "General Release of All Claims" executed on December 21, 1942 by Suckow Borax Mines Consolidated, Inc. and delivered on January 2, 1943.

(m) As Exhibit 13, certified copy of document entitled "Corporation Grant Deed" executed by Suckow Borax Mines Consolidated, Inc. on December 21, 1942 and recorded on December 29, 1942.

(n) As Exhibit 14, photostatic copy of original letter dated January 2, 1943 to Pacific Coast Borax Company from Title Insurance and Trust Company.

(o) As Exhibit 15, photostatic copy of original document executed on December 21, 1942 by said Paul O. Tobeler as Special Administrator of the Estate of John K. Suckow and Ruth Suckow, as stockholders of Suckow Borax Mines Consolidated, Inc., and all other stockholders of that corporation, addressed to it and authorizing it, inter alia, to make and execute the above grant deed of which Exhibit 13 is a copy and to execute and deliver a release of which Exhibit 12 is a copy.

The originals of the photostatic copies referred to in paragraphs (h), (i), (j), (k), (l), (n) and (o) above are in affiant's possession and custody and will be produced in court upon the hearing of the foregoing motions to be substituted in evidence for

the photostatic copies thereof if the genuineness of the copies is in any way questioned.

Dated: San Francisco, February 2, 1948.

/s/ NEWLIN, HOLLEY, SANDMEYER  
& COLEMAN

/s/ MAURICE E. HARRISON

/s/ MOSES LASKY

/s/ BROBECK, PHLEGER & HARRISON  
Attorneys for Defendants Borax Consolidated,  
Ltd. and certain others.

(Acknowledgment of Service.)

[Endorsed]: Filed Feb. 2, 1948.

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[Title of District Court and Cause.]

Notice of Motions of Defendant West End Chemical Company, a Corporation, to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted, to Dismiss Because the Action is Barred by the Statute of Limitations, for a Summary Judgment, and to Strike.

To Suckow Borax Mines Consolidated, Inc., Mojave Borax Company, Ltd., Paul O. Tobeler, Executor of the Last Will and Testament of John K. Suckow, Deceased, Ruth E. Suckow, Plaintiffs herein, and to Thurman W. Arnold, Esq. and Sterling Carr, Esq., Attorneys for Plaintiffs.

Please take notice, hereby given, that on Monday, the 16th day of February, 1948, at the hour of 10 o'clock a. m., or as soon thereafter as counsel can



be heard, in the courtroom of the above-entitled court, before the Honorable Michael J. Roche, District Judge, in the Post Office Building in the City and County of San Francisco, State of California, defendant West End Chemical Company, a corporation, will move the court as follows:

### I.

To dismiss the action with respect to the claims asserted by each plaintiff as against this moving defendant on the ground that the complaint fails to state a claim on which relief can be granted to said plaintiff against this defendant; said motion will be made severally as respects each plaintiff.

### II.

To dismiss the action as against this moving defendant and as respects the claims of each of the plaintiffs on the following grounds:

1. That the action on behalf of each of said plaintiffs is barred by the Statute of Limitations.

2. That the action on behalf of each of said plaintiffs is barred by the provisions of Subdivision (1) of Section 338 of the California Code of Civil Procedure.

3. That the action on behalf of each of said plaintiffs is barred by the provisions of Subdivision (4) of Section 338 of the California Code of Civil Procedure.

4. That the rights of action set forth in the complaint on behalf of each of said plaintiffs did not accrue within three years next before the commencement of the action but accrued, if at all, prior



to said three years and are therefore barred by the Statute of Limitations.

5. That the rights of action set forth in the complaint on behalf of each of said plaintiffs did not accrue on or after October 11, 1943 but accrued, if at all, prior to said date and are therefore barred by the Statute of Limitations.

6. That the rights of action set forth in the complaint on behalf of said plaintiffs did not accrue on or after December 21, 1940 but accrued, if at all, prior to said date and are therefore barred by the Statute of Limitations.

Said motion will be made severally as respects each plaintiff and this moving defendant.

### III.

In the alternative, and in the event that none of the foregoing motions is granted with respect to each plaintiff, To dismiss as against this moving defendant each of the claims for relief and causes of action asserted by the plaintiffs in paragraphs 79, 80 and 82 to 94, inclusive, and each of said paragraphs, on the following grounds:

1. That said claims for relief and causes of action are barred by the Statute of Limitations.

2. That said claims for relief and causes of action are barred by the provisions of Subdivision (1) of Section 338 of the California Code of Civil Procedure.

3. That said claims for relief and causes of action are barred by the provisions of Subdivision (4) of Section 338 of the California Code of Civil Procedure.

4. That the rights of action set forth in said portions of the complaint on behalf of plaintiffs did not accrue within three years next before the commencement of the action but accrued, if at all, prior to said three years and are therefore barred by the Statute of Limitations.

5. That the rights of action set forth in said portions of the complaint on behalf of said plaintiffs did not accrue on or after October 11, 1943, but accrued, if at all, prior to said date and are therefore barred by the Statute of Limitations.

6. That the rights of action set forth in said portions of the complaint on behalf of said plaintiffs did not accrue on or after December 21, 1940, but accrued, if at all, prior to said date and are therefore barred by the Statute of Limitations.

Said motion will be made severally as respects each plaintiff and this moving defendant.

#### IV.

In the alternative, and in the event that none of the foregoing motions is granted with respect to each plaintiff, To Grant a Summary Judgment for this moving defendant as against each plaintiff on the ground that there is no genuine issue as to any material fact and that this moving defendant is entitled to a judgment as a matter of law.

#### V.

In the alternative, To Strike from the complaint the following allegations on the grounds that they are, and each of them is, redundant, immaterial and impertinent matter, to wit:

1. All allegations of paragraphs 79-94, inclusive,

and severally each and every one of the allegations contained in said paragraphs.

2. The words in subdivision (b) of paragraph 83, at lines 10 and 11 on page 43, "and by chicane and false testimony and by other devious means."

3. All of subdivision (c) of paragraph 83 down to, but not including, the words in lines 28 and 29 on page 45 reading, "on March 2, 1933 said Suckow Company was formally adjudged a bankrupt."

4. The words "Through false and fraudulent testimony" in line 22 on page 45 in subdivision (c) of paragraph 83.

5. All of subdivision (d) in paragraph 83 down to, but not including, the words in lines 29 and 30 on page 46 reading, "that on or about the 17th day of April, 1934 and after court proceedings to such end, a lease was granted \* \* \*."

6. In subdivision (f) of paragraph 83 the first thirteen words reading, "Meanwhile, and in order further to harass said Suckow and said Suckow Company," and the words "said action was commenced with the idea of taking whatever action might be possible to complicate matters further for said Suckow and Suckow Company" in lines 6 to 8 on page 48.

7. All of subsection 8 of subdivision (g) of paragraph 83.

Each of the foregoing motions will be based on all the pleadings and papers on file herein, including this notice of motion, and upon all of the affidavits, exhibits, documents and papers heretofore filed, and hereafter to be filed by or on behalf of

defendants Pacific Coast Borax Company, Borax Consolidated, Ltd., United States Borax Company, Frank M. Jenifer, James M. Gerstley, and each of them, and each and every other defendant in connection with any motion or motions similar to any motion or motions hereinabove set forth, which are by reference hereby incorporated herein and made a part hereof.

Dated: Oakland, California, February 2, 1948.

/s/ JOHN L. REITH,

Attorney for defendant West End Chemical Company, a corporation.

(Affidavit of Service By Mail Attached.)

[Endorsed]: Filed Feb. 2, 1948.

\* \* \* \*

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[Title of District Court and Cause.]

AFFIDAVIT OF PAUL O. TOBELER IN REPLY TO MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT.

United States of America,  
Northern District of California,  
City and County of San Francisco—ss.

Paul O. Tobeler, being first duly sworn, deposes and says:

That he is the Secretary of Suckow Borax Mines Consolidated, Inc., a corporation, one of the plaintiffs above named; that he is the Executor of the Last Will and Testament of John K. Suckow, Deceased, and as such is also one of the plaintiffs above



named; that he has read the affidavits of Moses Lasky, Allan W. Ashburn, and Albert H. Bargion filed herein in support of said motions for summary judgment and to dismiss; that he has examined the exhibits attached to each of such affidavits and is familiar with the contents thereof;

That affiant is informed and believes and therefore alleges as follows, to-wit:

1. That on or about the 12th day of November, 1929 a meeting was held by Messrs. Baker, Johnson, Zabriskie, Stauffer, Wieder and Blumenberg, Jr., in San Francisco, California, in which arrangements, hereinafter described, were made and entered into; that under date of November 12, 1929, said Henry Blumenberg, Jr., telegraphed Erwin R. Dick, in care of Schering Corporation, 110 Williams Street, New York City, by Western Union Telegraph Company, as follows:

“November 12th, 1929

“Mr. Erwin R. Dick,  
Schering Corporation,  
110 William St.,  
New York City.

“Meeting was held in San Francisco Baker Johnson of London Zubrisky of New York Stauffer Wieder of San Francisco and Myself I insisted my contract with German refiners for twenty thousand long tons basis forty four must be lived up to to which Baker promptly agreed stop In addition Stauffer and myself received twenty thousand long tons in America with distinct understanding that Stauffer is not to enter the European markets any



more while Baker did not admit this we are firmly convinced they have an understanding with Trona stop The only large outside interest in Western Borax is the five hundred thousand shares sold to Stauffer which really is only one tenth of total capitalization stop Advise Germans as long as I live Western Borax will never be sold as the value of the property has increased so tremendously that neither Trona or Pacific Coast can afford to buy it I have taken best of care of our German friends and before any further negotiations go on I might be favorably inclined to increase their ten years contract to twenty years if they meet me half way in other matters kindest regards

BLUMENBERG”.

Paid-Charge to: Western Borax Company 566 Sub. Term. Bldg., Los Angeles, Calif.”

2. That said Erwin R. Dick was the United States representative for the German Borax Syndicate known as Deutsche Borax-Vereinigung (herein described as DBV and referred to on page 28 of complaint herein); that the Home office of said DBV was in Hamburg, Germany, and that one Johannes Grasshoff was the Secretary of said DBV; that the cable address of said DBV was “Borax-union”;

That said DBV was a part of said agreements, monopoly and conspiracy described in the complaint and hereinafter referred to;

3. That under date of—New York, October 15, 1929 said Dick telegraphed Henry Blumenberg, Jr.,

in care of Western Borax Company, Los Angeles, California, as per Exhibit 1 hereto attached and made a part hereof; that said BCL referred to in said telegram was Defendant Borax Consolidated, Ltd., and that Trona referred to in said telegram was Defendant American Potash & Chemical Corporation; that wherever in this affidavit BCL and Trona are referred to they are respectively said Borax Consolidated, Ltd., and said American Potash & Chemical Corporation;

4. That under date of November 12, 1929, said Henry Blumenberg, Jr., sent a letter to said Erwin R. Dick, confirming said telegram referred to above, and which letter reads as follows:

“November 12th, 1929.

“Mr. Erwin R. Dick,  
Schering Corporation,  
110 Williams St.,  
New York, N. Y.

My dear Mr. Dick:—

I hereby wish to acknowledge your telegram as per copy enclosed and am attaching also carbon copy of my answer to you which, I trust, is self-explanatory.

It means that Stauffer and ourselves will not go across the Atlantic for any other business except the twenty thousand long tons, 44% basis, that is under contract with our German friends. Likewise. I personally have agreed not to quote in Mexico. But the Japanese, Chinese and all the Asiatic trade will be open to a fair competition. Stauffer re-

ceived the present American Price list which, I believe, is the last one Trona is now selling under. We are not to approach one another's customers except on the basis of the issued price list in America. With one large customer that Stauffer and ourselves have, the price has already been fixed.

“For your information I wish to state that Stauffer and ourselves control the American Box Company fifty-fifty and that I will make about 300 to 500 tons of refined borax at our Mine per month, from my low grade ores that cannot be shipped to Germany and expect Stauffer and the American Borax Company to handle this product. This understanding is between the Stauffer Chemical Co., the West End Chemical Co. (Borax Smith property at Searles Lake) the American Borax Co., the Western Borax Co., and the only outsider now is the Suckow Chemical Co., which, as you know, is already half owned by the Pacific Coast Borax Co. and which, I believe, is lined up for further litigation.

\* \* \* \*

Mr. Erwin R. Dick—Cont.

Suckow made a contract in Holland obligating this property that is jointly owned by the Pacific Coast Borax Company and Suckow, taking a certain sum of money in cash which up to the present writing has not been distributed; in other words he kept all of the money instead of turning half of it to the Pacific Coast Borax Co. which he must do according to law. He is taking it all and has over-

looked accounting for the same. As the Pacific Coast Borax Co. owns half undivided interest in this property, you can readily see the trouble that is going to be ahead for both Suckow and the Holland people in the future. I understand the people in Holland have already been notified by the BCL that they owned half of this property.

As stated above, we are firmly convinced that Baker in London and the American Trona have some kind of an agreement to raise prices. You probably know that this has already been done all over Europe except in Germany and they, no doubt, will try to make some deal with the Germans better than they could with us, as I insisted on the maximum requirements under the German Contract and they will probably approach the German Refiners for reduction of this to the minimum. This is a matter, however, for the Germans to handle themselves. Please advise them immediately by cable that I protected them at this end for their full requirements, namely 15,000 long tons to Germany direct and 5000 long tons for Continental Europe as they can sell.

With kindest personal regards,

Sincerely yours,

WESTERN BORAX COMPANY

By Henry Blumenberg, Jr.,

Vice-Pres.

Encl.: 2 Telegram Copies HB:FF."

5. That subsequent thereto and under date of November 27, 1929, said defendants made and entered into, in the City and County of San Fran-



cisco, State of California, a certain Memorandum of Agreement, of which the following is a copy:

### “MEMORANDUM OF AGREEMENT

November 27, 1929

Stauffer Chemical Co. to agree not to sell more Borax or Boric Acid than was sold by them with the Borax Union, Inc., American Borax Co., West End Chemical Co., or other associates, during the twelve months to September 30, 1929, and in any case this quantity is not to exceed 12,000 tons of Borax and 2,400 tons of Boric Acid (2000 pounds per ton).

Stauffer Chemical Co. and their associates are not to sell at less than our prices and conditions to be as set for the United States of America, Canada, Japan or other than European countries.

Stauffer Chemical Co. and their associates are not to sell in or for European countries (other than the works in Gernsheim in which Stauffer Chemical Co. are interested).

Each party named as above or otherwise is to, so far as possible, refrain from quoting to or interfering with the customers of the other party or parties.

The Western Borax Company is to confine its operations to filling the requirements called for under their contract with the German refiners (it being understood that this does not exceed 20,000 long tons Rasorite per year basis 44% ABA), and the requirements of Stauffer Chemical Co. and their associates for the production of Borax and Boris Acid as set out above.



Should Stauffer Chemical Co. and their associates not succeed in selling the quantity of Borax named above, the Pacific Coast Borax Co. will take off their hands such unsold Borax, the quantity, of which, however, is not to exceed 3000 tons (2000 pounds), and will pay for the same at the net price ruling at the time of transfer, less the expense of marketing, such as freight and commission.

This arrangement is to be for 12 months from this date, renewable for a further period by mutual agreement to be made not less than 3 months before the expiration of the said period.

.....  
.....”

6. That under date of November 27, 1929, the said Blumenberg wrote said Dick a letter in the words and figures following, to-wit:

“Under a Memorandum of Understanding, dated November 27, 1929 and signed by Mr. C. B. Zabris-  
kie, Vice-President of the Pacific Coast Borax Company, it was understood and agreed in the following words: ‘The Western Borax Company to confine its operations to fulfill the requirements called for under their Contract with the German Refiners (it being understood that this does not exceed 20,000 long tons Rasorite per year, basis 44% ABA.) and the requirements of the Stauffer Chemical Company and their associates for the production of borax and Boric acid as set out above.

The clause referred to above reads as follows in reference to the Stauffer Chemical Company: ‘Stauffer Chemical Company agrees not to sell more borax

or Boric acid than was sold by them within the Borax Union, Inc., the American Borax Company and the West End Chemical Co. or other associates during the 12 months to September 30th, 1929, and in any case this quantity is not to exceed 13,000 tons of borax and 2400 tons of Boric Acid.'

Now, for further information to your goodself, I wish to state that we receive half of the refining profits of the Stauffer Chemical Company's plant in San Francisco and we also receive half of the refining profits of the American Borax Company of Rochester, Pa. And in addition to that, we are half owners of the American Borax Company in Rochester, so that the Western Borax Company received its initial delivery price on crude ore from the American Borax Company. We then receive half of the refining profits and in addition to that we take also half of the dividends.

This, I trust, will show you conclusively that if the Germans stand for anything less than 20,000 long tons, 44% ABA., they certainly did it of their own volition as I certainly took pretty good care of them at this end at the Conference; I fought for the 20,000 tons all afternoon, Mr. Zabriskie left the meeting about 2 o'clock, consulted with Mr. Baker privately, came back about 5 o'clock in the afternoon and agreed to give us the full German tonnage and put his signature to the same.

The thought has occurred to me, that with our German friends' consent, it might pay you to consult your attorneys in New York and have them write a form of a letter to be addressed to me in

reference what my views are in regard to this 5000 tons of re-sale. I will copy the letter and send it on either to Mr. Grasshoff or yourself and even if you do not use it, it will be a nice matter of reference to have when we meet again on September 30th, 1930.

Now, in reference to my showing the Contract to them, I flatly refused to do so and in evidence of this I am enclosing you carbon copy of my telegram and likewise Mr. Stauffer's telegraphic answer. I did take the Contract to San Francisco, but showed only two or three paragraphs referring to the 20,000 tons and to the price agreed upon and our English friends saw absolutely nothing else and if they say they did, they are making statements which I will be compelled to question.

With kindest personal regards,

Very truly yours,

WESTERN BORAX COMPANY

By Henry Blumenberg, Jr.,

Vice-Pres."

7. That under date of November 14, 1929, said Blumenberg cabled said DBV at Hamburg, as follows:

"Baker expects handle Trona. I am confident Baker and Trona already have some understanding. Our agreement only one year, but we must meet again three months before expiration. Suckow, Burnham not in deal. Lawsuit being prepared against Suckow now. Think Baker doing everything possible to raise prices and stabilize the industry.

This is a very large problem to settle.” (Emphasis ours.)

8. That under date of November 18, 1929, said Johannes Grasshoff of said DBV wrote a letter to Western Borax Company, a copy of which is hereunto annexed, marked Exhibit 2, and made a part hereof; that said letter, according to the stamp thereon, was received by said Western Borax Company on December 3, 1929.

That among the files and records of the action and indictment commenced and secured by the United States Government against Borax Consolidated and others and referred to in paragraph 89, page 60, of the complaint herein, there is on file a copy of a letter dated March 12, 1930 from said A. W. Ashburn, of the legal firm of Newlin & Ashburn, Esqs., one of the attorneys for BCL and PCB, addressed to Mr. William E. Colby, Mills Building, San Francisco, California; that affiant is informed and believes that the original of said letter was introduced in said proceeding and was subsequently impounded by order of the court in which said proceedings were pending, but that a copy thereof now remains in said file; that a copy of said letter is hereunto annexed, marked Exhibit 3, and made a part hereof; that the “bill” referred to in said Ashburn letter was the bill in equity referred to in action No. C-107-M on page 26 of the brief on behalf of Defendants BCL and others filed herein in support of said motion for summary judgment.

That on pages 26 to 35 of said brief of Defend-



ants Borax Consolidated, Ltd., et a., reference is made to an action in the District Court for the Southern District of California, commonly known as the "Equity" action and numbered C-107M. Many quotations appear in such brief from various pleadings in said action filed herein by said Suckow and said Suckow Company in which Defendant Borax Consolidated and other defendants were charged with forming a conspiracy and combination to ruin said Suckow.

That in said action and under date of January 31, 1934 A. W. Ashburn of the firm of Newlin & Ashburn, Esqs., attorneys at law in Los Angeles, California, and representing said Borax Consolidated, Ltd., in said action, addressed a letter to the Honorable Harry A. Hollzer, Judge of the United States District Court, Federal Building, Los Angeles, California, a copy of which is hereunto annexed, marked Exhibit 4, and made a part hereof. Affiant requests that this Court note that in the second paragraph of such letter, said Ashburn denies that plaintiff therein is a monopoly in any sense of the word, and then goes on to state that Defendant American Potash & Chemical Co. is a competitor of said plaintiff. As a matter of fact, said American Potash & Chemical Company was at said time and ever since said Agreement of 1929 a party to said Agreement of '29 and all continuing agreements thereof; every effort is made in said letter to place upon said American Potash & Chemical Company the onus of price cuts and competition.



That on page 35, Subdivision (6) of said brief on behalf of said British defendants reference is made to the Senate Investigating Committee, and on page 37 it is stated that Senator Hebert read a statement by Thomas McManus first Receiver in Bankruptcy of the Suckow Company quoting various portions of said report; that a full copy of said report is hereunto annexed, marked Exhibit 5, and made a part hereof, and from which it will be seen that said Thomas McManus in stating his belief that a conspiracy had been formed by certain of the defendants referred to the conspiracy to institute and carry on said bankruptcy proceeding; it will also be noted that no reference of any kind whatsoever to the '29 conspiracy was made by Mr. McManus.

That attached hereto, marked Exhibit 6, and made a part hereof, is a copy of parts of the Answer to Defendant Borax Consolidated, Ltd., to the petition for an order to show cause why the trustee in bankruptcy should not execute and deliver a lease. This was filed in the matter of Suckow Borax Mines Consolidated, Inc., a corporation, Bankrupt, No. 16,938-H in the District Court of the United States for the Southern District of California, Southern Division. Said answer was filed on or about February 6, 1934. Affiant refers to page 2 of said exhibit commencing with the words "And respondent" down to and including the words "decreased prices" on page 3; also to pages 12 to 17. Affiant also refers to the signatures attached to said answer, namely, Borax Consolidated, Ltd., by F. M. Jenifer, Its

Agent, Respondent and Appearing Specially, Newlin and Ashburn, by A. W. Ashburn, Attorneys for said Respondents so Appearing Specially; also to the fact that said answer was sworn to by said F. M. Jenifer.

That affiant is informed and believes and therefore alleges that on or about the 10th day of January, 1930, said DBV, under its code name, "Borax-union," cabled from Berlin, Germany, to Western Borax Company, Los Angeles, California, certain information set forth in said cable, a copy of which is hereunto annexed, marked Exhibit 7, and made a part hereof; that affiant is also informed and believes and therefore alleges that under date of January 28, 1930, from Hamburg, Germany, Johannes Grasshoff, Secretary of said DBV, wrote a letter to Western Borax Company at Los Angeles, California, a copy of which is hereunto annexed, marked Exhibit 8, and made a part hereof; it will be noted that on the first page of said letter there is a stamp of the Western Borax Company indicating that said letter was received by said Company on the 15th day of February, 1930; that said telegram and letter had reference to the extension of said Agreement of 1929 made in San Francisco and hereinabove referred to.

That affiant is informed and believes and therefore alleges that on or about the 16th day of November, 1932, said Blumenberg of Western Borax Company, Stauffer of Stauffer Chemical Company, and Sherwin of West End Chemical Company met in San Francisco for the purpose of arranging the

yearly renewal of said 1929 Agreement; that Mr. Gurney Newlin, a member of the firm of Newlin & Ashburn, representing Defendants BCL and PCB, was also present; that during the course of said meeting said Newlin telegraphed R. C. Baker, then Managing Director of Defendant BCL, at New York, a copy of which telegram is hereunto annexed, marked Exhibit 9, and made a part hereof;

That during the year 1935 and prior thereto, one William Gauge was an Importer and Exporter doing business in San Francisco, California; that prior to said 1935, said Gauge had entered into a contract with Pacific Coast Borax Company for the purchase and sale of certain borax to be shipped to Japan; that said Gauge was a partner of said Devin referred to in said telegram from said Newlin to said Baker, a copy of which is hereunto annexed and marked Exhibit 9; that at said time, J. M. Gerstley was Assistant to the Vice President of said PCB; that under date of May 10, 1935, said Gerstley in such capacity wrote said Gauge a letter, a copy of which is hereunto annexed, marked Exhibit 10, and made a part hereof. The pencil mark thereon was made by affiant; that affiant is further informed and believes and therefore alleges that on July 8, 1937, said J. M. Gerstley addressed a letter in longhand to said William Gauge, a copy of which is hereunto annexed, marked Exhibit 11, and made a part hereof; that said letter or a copy thereof is on file in the Office of the Clerk of this Court in that certain criminal proceeding referred to in Paragraph 89 of the complaint herein, and which proceeding is numbered 28,900-S;

That said copies of said letters are attached hereto to further demonstrate the fraudulent concealment by defendants of said conspiracy of 1929 as charged in Paragraph 91, page 61, of the complaint herein.

That affiant refers to Paragraph 83, Subdivision (c) of the complaint on file herein, page 43 et seq. thereof, in which it is alleged that one Victor C. Emden was employed by Defendant PCB to assist in bringing about the filing of the said involuntary petition in bankruptcy against said Suckow Company; that various activities by said Emden are charged in the complaint; that affiant is informed and believes and therefore alleges that it was agreed that said Emden should be paid the sum of Ten Thousand Dollars (\$10,000.00) for his fraudulent activities against said Suckow Company. That under date of May 5, 1935, said Defendant PCB addressed a letter to said Emden who was then in New York, a copy of which letter is hereunto annexed, marked Exhibit 12, and made a part hereof; that the receipt accompanying said letter was received by said Emden and signed by him on the 10th of May, 1935; that a copy of said receipt, together with the back attached thereto and on which appear the words "Newlin & Ashburn, 1020 Edison Building, Los Angeles," is hereunto annexed, marked Exhibit 13, and made a part hereof;

That affiant is informed and believes and therefore alleges that the services and disbursements referred to in said receipt were for the activities of said Emden in securing certain false affidavit



and certain signatures to said involuntary petition in bankruptcy, all as set out on pages 44 et seq. of the complaint herein;

That affiant is further informed and believes and therefore alleges that said arrangements with said Emden were made by C. R. Rasor, as agent and representative of PCB.

As to the indictment and civil action secured and brought by the United States Government and referred to in Paragraph 89 of the complaint on file herein: That in said indictment and civil action the following defendants herein were named as defendants therein and in each of said proceedings: Borax Consolidated, Ltd., Pacific Coast Borax Company, United States Borax Company, American Potash & Chemical Corporation, James M. Gerstley, Frank M. Jenifer and F. C. Baker; that said indictment and said civil action were based upon the 1929 conspiracy constituting the cause of action set forth in the complaint on file herein. That under date of August 16, 1945 said defendants, and each of them, in said criminal proceedings withdrew their plea of not guilty and pleaded nolle contendre and were subsequently fined various amounts by the said court in which said proceeding was pending;

That in said civil action the defendants filed their answers and subsequently agreed with the Government's attorneys upon a consent decree, and under date of August 16, 1945, an order was made to the effect that such consent decree be entered as to all defendants, except one not named herein; that on



said date a final decree as to all of said defendants, with such exception as aforesaid, was filed in this Court; that by said consent decree various obligations and duties were imposed by said court upon certain of said defendants;

That affiant is informed and believes and therefore alleges that the entering of such plea of nolle contendre by said defendants constituted an admission of all of the facts of said indictment.

That on or about the first day of May, 1930, said C. M. Rasor, who is now deceased, made an affidavit in the so-called equity suit then pending in the United States District Court for the Southern District of California, and entitled *Borax Consolidated, Ltd., a corporation, vs. Suckow Borax Mines Consolidated, Inc., a corporation, et al.,* and numbered therein *In Equity No. C-107-M*; that in said affidavit said C. M. Rasor stated as follows, to-wit:

“It is not true that plaintiff has for years or now does predominate in the borax market of the world nor is it true that defendant Suckow Borax Mines Consolidated, Inc. would be irreparably or at all damaged by an interruption of its operations or that plaintiff would gain in approximately the same or any proportion as defendant claims that it would be damaged thereby. It is true that plaintiff does not control or predominate in the distribution or setting of prices for borax or borax products either in the United States or throughout the world nor is it true that if defendant’s customers were deprived of the supply from the premises described in the complaint, they would be compelled to get

their refined borax from three concerns or approximately three concerns.”

That said affidavit was made in behalf of said BCL, the plaintiff in said equity action; that said Rasor was at said time an agent and one of the directing heads of Defendant PCB; that said affidavit was made approximately six months after the making of said 1929 Agreement referred to hereinabove.

That in certain of the exhibits attached to Mr. Lasky's affidavit, filed in support of these motions, is the statement that at various times Dr. Suckow, or his attorneys, referred to said BCL and other defendants as “the Borax Trust” or “the borax monopoly,” and in this connection affiant alleges that among the trade in the borax industry, and among those dealing in borax, said BCL has been generally known and described as “the Borax Trust,” not with any intent or meaning as a violator of the anti-trust law but in a mere colloquial manner as designating the largest producer of borax then in the commercial field.

#### AS TO WEST END CHEMICAL COMPANY:

Affiant is informed and believes and therefore alleges that some years ago said West End Chemical Company, herein referred to as West End, and Defendant Stauffer each owned fifty per cent (50%) of Borax Union; that subsequently Stauffer purchased the fifty per cent interest from West End and, thereupon became the owner of all the stock of Borax Union; that in 1940, Stauffer held

over 300,000 shares of West End and at many and different times since 1929 acted as associate and spokesman for said West End, shown, in part, by the correspondence of November 12, 1929 and the Agreement of November 27, 1929, both hereinabove referred to; that at all of said meetings said Stauffer represented said West End; in the Agreement of November 27, 1929, said West End is referred to as an associate of Stauffer; West End is also mentioned in the said telegram of Newlin to Baker, constituting Exhibit 9 hereto attached; that said West End has been a member of said 1929 conspiracy and combination from its inception and, according to affiant's information and belief, continued as such up to approximately the year 1944.

That under date of August 1, 1930, John Stauffer, an officer of said Defendant Stauffer, sent a telegram to said Henry Blumenberg of Defendant Western Borax Company, a copy of which is hereunto annexed, marked Exhibit 14, and made a part hereof; that under date of August 19, 1930, the said Blumenberg replied to the said telegram from said Stauffer, a copy of which is hereunto attached, marked Exhibit 15, and made a part hereof; that the said "S" referred to in said last exhibit (15) was an abbreviation for Dr. Suckow; that affiant is informed and believes and therefore alleges that the said Stauffer, in sending said telegram to said Blumenberg, also represented and acted for Defendant West End Chemical Company.

That affiant is informed and believes and therefore alleges that during the fall of 1930 the ques-

tion of renewing said Agreement of November 27, 1929 arose and that negotiations were had between certain of the defendants in Hamburg, Germany; that pursuant thereto, and under date of September 12, 1930, the said Johannes Grasshoff of said DBV, addressed a letter to Defendant Western Borax Company at Los Angeles, a copy of which letter is hereunto annexed, marked Exhibit 16, and made a part hereof; that attached to said letter was a "Statement of the Conditions for an Agreement for the Year 1931," and which statement is hereunto annexed and forms a part of said Exhibit 16; that the said C. Christoperson & Co., of London, was at said time the European representative of Defendant American Potash & Chemical Corporation, also known as Trona; that a photostatic copy of said Exhibit 16 is attached to the original of this affidavit but that the copies served upon the counsel for defendants herein are plain copies without the letterhead of said Johannes Grasshoff as appearing on said Exhibit 16 so attached to the original of this affidavit.

That affiant is further informed and believes and therefore alleges that under date of January 6, 1931, the said Grasshoff wrote a letter to Defendant Western Borax Company, Ltd., at Los Angeles, a photostatic copy of which is hereto attached to the original of this affidavit and that plain copies are attached to the copies of this affidavit served upon counsel for defendants; that said copy of said letter is marked Exhibit 17 and forms a part hereof; that affiant calls attention to the reference therein



to C. Christopherson & Co., the European representatives of Trona, and also to BCL and the activities of Mr. Baker and his plan to suggest to Dr. Suckow to close his mine; that said letter also refers to various meetings between members of said conspiracy.

/s/ PAUL O. TOBELER.

Subscribed and sworn to before me this 24th day of March, 1948.

(Seal) /s/ LAURA E. HUGHES,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires March 4, 1950.

EXHIBIT No. 1

[Western Union Telegram]

Night Letter                      New York, October 15, 1929  
Mr. Henry Blumenberg Jr.  
c/o Western Borax Company  
566 Subway Terminal Building  
Los Angeles California

Confidential have advise that BCL and Trona have reached agreement in London to increase prices for borax in some European countries except in Germany Stop German refiners have been approached but they make cooperation dependent on substantial increase of German selling price Stop This demand was only partly conceded whereupon German refiners demanded decision not later than second half November Stop Since Trona and BCL got together



Exhibit No. 1—(Continued)

in London it must be assumed that they will come to an arrangement in America especially since representatives of both firms have left London for USA Stop In their future deliberations regarding Borax business I assume they will have to make definite plans regarding their attitude towards you and I expect interesting developments Stop What have you heard about negotiations towards a cooperation between Trona and BCL in America and what is the present status of Trona Stop Have you been approached directly or indirectly and has anything occurred which shows what is in the wind Greetings

DICK

EXHIBIT No. 2

[Johannes Grakhoff Letterhead]

November 18, 1929

[Stamp]: Received Dec. 3, 1929, Western Borax Co.

Letter No. 130

To the Western Borax Company, Los Angeles:

Cable Confirmations Negotiations with  
Baker

I confirm the exchange of the following cables between ourselves:

Los Angeles Cable 11.8.1929

“Your contract recognized by BCL for twenty-thousand long basis fortyfour Stauuffer stays out Europe acknowledge—Blumenberg.

I cabled you back as follows, as I wanted more detailed information:

Exhibit No. 2—(Continued)

Hamburg Cable 9. Nov. 1929:

“Your cable received contents not quite comprehensible cannot come to a positive judgment as long as no detailed report to hand”

Los Angeles Cable 11.10.1929

“Mr. Baker Stauffer and ourselves have agreed on policy for America and stauffer is not to quote in Europe and Baker agreed to your fifteen thousand long tons fortyfour basis and fivethousand to sell other refiners in Europe acknowledge”

I acknowledged this cable as follows:

Hamburg Cable 11.13.29.

“German refiners will consent to agreement if following points are satisfactory settled first does agreement include Trona second are Baker and Trona willing to price agreements with German refiners third duration of your agreement fourth what about Suckow and Burnham.”

And here is your answer:

Los Angeles Cable 11.14.29:

“Baker expects handle Trona am confident Baker and Trona already have some understanding our agreement only one year but we must meet again 3 months before expiration (of contract) Suckow Burnham not in deal Lawsuit being prepared against Suckow now think baker doing everthing possible to raise prices and stabilize the industry this is a very large problem to settle.”

Contents of our cable communications I have forwarded to all the Members of the D.B.V. I am now

Exhibit No. 2—(Continued)

anxiously awaiting your letters giving me more detailed information about your negotiations with Mr. Baker.

With kindest personal regards, I remain

Yours very truly

/s/ JOHANNES GRAKHOFF.

EXHIBIT No. 3

March 12, 1930

Mr. William E. Colby,  
Mills Bldg., San Francisco, Calif.

My dear Mr. Colby:

Your letter of March 6 and the enclosed opinion relating to the matter of B.C.L. vs. Suckow, were received by me on Monday morning, and I have spent a large part of my time since then studying the matter. I very much appreciate the suggestions which you made and the very exhaustive and able opinion which you submitted. I have redrafted the bill so as to incorporate to the extent of my ability and respects the suggestion which you made, and will forward the redraft of the bill to you, either in this letter or under separate cover.

I have discussed with our client the matter of the partition suit but up to date they have rejected the suggestion because of the improbability of their being able to enforce any bid which Suckow, or his representatives, might make. In other words, he does not have to put up a bond and the only remedy

## Exhibit No. 3—(Continued)

would be an action at law to enforce the bid or a resale with an action for the difference; if meantime the property had been bought in at a resale, there would be very little, if anything, of a tangible nature out of which to collect the judgment.

Our client is also advised of the possibility that an accounting action may result in an adverse judgment, but notwithstanding, this fact, has concluded to pursue the matter at this time. Mr. Moreau, the company bookkeeper, made a transcript some months ago of most of Dr. Suckow's books and while the information thus obtained is wholly unsatisfactory, he and Mr. Dudley have so analyzed it as to indicate a very substantial profit on operations prior to the Gembo contract. Suckow, as you know, presented a fair but partial statement of account, during the taking of his deposition. Pursuant to the stipulation there made, Mr. Dudley has obtained or is obtaining, such further information as the Suckow books disclose. Of course, the burden is on him to account and if his books are inadequate, all matters of doubt would be resolved against him as they were in the other suit. Moreover it is extremely unlikely that the accounting suit would result in a money judgment against the Borax Co. If it should appear that the operations had been conducted at a loss (after taking into consideration the capital expenditures, etc.), the best that Suckow could expect would be a judgment to the effect that he have a lien upon the Borax Company's half of the property to the extent of half of the loss, and that upon satisfaction of the



## Exhibit No. 3—(Continued)

said lien, half of all of the improvements would belong to the Borax Co. (See *Higgins vs. Eva*, 75 Cal. Dec. 1927). In view of all these matters, it seems advisable to start the action and reduce the matter to a judgment as soon as possible. There are also policy reasons which make it seem to our client desirable to do this. (Emphasis supplied)

I am convinced that we can maintain an equity action and secure an accounting with respect to all of the ore which has been heretofore sold by Suckow, notwithstanding the apparent adverse nature of the McCord decision. I also think it easier to maintain this position in the Federal Court and for many reasons that seems the preferable tribunal. I am not convinced, however, that the measure of net profit would be what Suckow should have received as distinguished from what he did receive for the ore, unless we first establish a definite ouster on his part. Be that as it may, it seems to me that for present purposes we might well rest upon the presumption that notwithstanding the language of the McCord and similar decisions, the statute of Anne has become a part of the law of this state through the adoption of the common law (and on such questions as these the Federal Court is not bound, as I understand it, by the State), and that Suckow, in selling the ore, was at all times trustee or bailiff for the Borax Co. as well as himself and his accountability measured by his actual profits; this position would be advantageous to us in any injunction proceeding.

In other words, I have very substantial doubt of our ability to maintain the action itself and procure



## Exhibit No. 3—(Continued)

an accounting, the thing which bothers me, however, is the question of an injunction. After considering your opinion I am more doubtful than ever about our ability to obtain that relief, but this particular consideration appeals to me. Unless motion for temporary injunction is made, Suckow will go along to suit himself, pursuing all of the objectionable practices in which he is now engaged; if we fail in our attempt to procure a temporary injunction, it will be, in my judgment, because of the offer made in that proceeding to segregate the ore, leaving one pile for us to take when we please; you will note that in the redraft of the bill I have sought to discount the effect of such an offer when and if made; in the light of those allegations, I think it reasonably certain that we can, in the event of denial of injunction, procure an order which will be expressly conditioned upon Suckow's making a continuous and fair segregation of the ore. The cost of production at the mouth of the mine is now at least \$3.00 per ton, almost twice the Borax Co.'s cost at its Kramer property. If Suckow has to produce two tons for each ton that he takes, it costs him in cash \$6.00 per ton to perform his Gembo contract before the ore ever left the mouth of the mine, and all that he gets to offset this \$6.00 is a possible lien on the Borax Co.'s half of \$3.00 and the proceeds of the Gembo contract. If our people are right, to the effect that the Gembo contract cannot be performed at a profit in the face of present market prices, this segregation of the ore will break Suckow's back before long. There is only one thing that can prevent it and that

## Exhibit No. 3—(Continued)

is an increase in market prices, which would, as you know, be most acceptable to our client. Perhaps this additional order would be the fulcrum by which they could pry Suckow into some kind of sensible cooperation. It seems to me, therefore, it is well worthwhile for us to procure a temporary injunction and that the move cannot result in any real detriment to us. At most, it will give Suckow a temporary flash of victory, which will, however, quickly dissipate when he finds that he is breaking his own back.

Mr. Baker and Mr. Zabriskie will be in San Francisco on one of their customary visits about the first of April. Mr. Baker has it in mind to have a conference of some kind with Suckow at that time and it seems to me that if we should file our suit and have our application for the temporary injunction so noticed that it would be returnable a few days after Mr. Baker's arrival, the stage would be very nicely set for an advantageous conference.

I note what you say about procuring from Suckow a definite refusal to permit the borax company to occupy the premises jointly with him. I have not the deposition before me, but am inclined to think that that testimony, coupled with the attorney's advice there shown and the correspondence about which he there testified, are sufficient to establish an ouster. I never had been able to get a definite Yes or No out of Suckow on anything, and I very much fear that if we made a new demand on him, we would either meet with complete silence, or an equivocal

Exhibit No. 3—(Continued)

answer which would leave us in no better position than that which we now occupy.

I have noted what you said about joining Gembo as a defendant. It seems to me, however, that it is a good tactical move, in the first place, because of the effect on both Suckow and Gembo. Moreover I fear that the Gembo might be held an indispensable party, in which case, its absence would be fatal to the suit; on the other hand, if Gembo is held an improper party, it can be dismissed and no harm has been done to anyone.

I am also sending you with the redraft of the bill a copy of affidavits which I have just received from Mr. Baker and Mr. Johnson, relative to European market prices and conditions. These can, of course, be supplemented by local affidavits as to costs on this side of the water.

As soon as you have had an opportunity to consider this redraft of the bill, I would like to have you get in touch with me by telephone or otherwise, and unless you are entirely satisfied to follow the procedure here outlined, I would like to have a conference with you at the earliest possible date either in San Francisco or Los Angeles as may prove to be mutually convenient.

Yours very truly,

/s/ A. W. ASHBURN,  
of Newlin & Ashburn.

cc: to Mr. C. M. Rasor.

EXHIBIT No. 4

Newlin & Ashburn  
1020 Edison Building, Los Angeles

January 31, 1934

Honorable Harry A. Hollzer  
Judge of the United States District Court  
Federal Building, Los Angeles, California

Borax vs. Suckow

My dear Judge Hollzer:

It seems that each change of counsel on the part of defendant involves in some form a reargument of various features of the case already passed upon by your Honor—all without regard to the prescribed method of reviewing erroneous decisions through motion for new trial. The contention now raised by Mr. Neblett's letter to you, dated January 30th, is but a reverberation of some of Mr. Haas' arguments.

The surprising feature of the present contention of counsel is the fact that very slight bona fide investigation would disclose the incorrectness of his principal assertions. To begin with, the plaintiff is not a monopoly in any sense of the word. It produces and markets less than half of the country's production of borax and less than half of the world consumption. Its chief competitor is the American Potash & Chemical Co., commonly known as Trona Corporation, which has its plant at Searles Lake and which produces borax as a mere by-product of its extraction of potash from the waters of the lake. West End Chemical Company is another substantial



## Exhibit No. 4—(Continued)

and active competitor, which also produces its borax as a by-product from Searles Lake water. Another competitor is Pacific Alkali Company, whose plant is at Bartlett, California. Not only does the plaintiff not have the greater volume of the business but it is at the mercy of the Trona Corporation and its other competitors as to prices. Production of borax as a by-product enables them to dictate prices, and when Trona concludes, as it frequently does, to reduce the price there is nothing left for the plaintiff to do except to meet the new price in order to hold its business. The statement that prices have risen since the commencement of this litigation is untrue. There have been no changes except in a downward direction and the price today is the lowest in the history of the industry. Moreover, Trona is now engaged in enlarging its plant to an extent which will enable it alone to produce more than half of the world consumption of borax, and in doing so declares itself more interested in increasing distribution than in maintenance of reasonable prices.

The claim that the reason for failure of the borax industry to adopt a code under the National Recovery Act is due to plaintiff's monopolistic control of the business is fantastic. Earnest and prolonged efforts to that end have been made but they have been frustrated by the position taken by the Trona Corporation. The borax industry will, pending the adoption of its own code, operate under the general code pertaining to the chemical industries, which is about



## Exhibit No. 4—(Continued)

to be approved and will doubtless become effective at an early date.

It is the plaintiff's purpose to collect its judgment from Dr. Suckow if possible, and the fact that he has made transfers of his property during the pendency of this litigation seems to be now conceded by his legal representative. The mine, it will be recalled, belongs to the bankrupt corporation and not to Dr. Suckow, so that any levy upon the judgment against him can have no effect upon that property or its production. We take it that your Honor will now hold, as heretofore, that the defendant's liability for misappropriation of plaintiff's ore is not affected in the slightest degree by charges that plaintiff is a monopoly, or, to phrase it in the current language, "a big, bad wolf."

That such is the only sound legal viewpoint is definitely established by such cases as *D. R. Wilder Manufacturing Co. v. Corn Products Refining Co.*, 236 U.S. 165, 59 L. Ed. 520, and *A. B. Small Co. v. Lamborn & Co.*, 267 U.S. 248, 69 L. Ed. 597. The case of *Morey v. Paladini*, 187 Cal. 727, which defendant's counsel cites, is not in point. That was an effort to enforce a contract which of itself was in restraint of trade. It represents no legal analogy.

We trust that your Honor will not be misled, by the repeated (but unsupported) asseverations of defendant and his counsel, into a misconception of the true nature of this litigation. It has been established that defendant wrongfully appropriated to his own use the plaintiff's ore, that he owes \$41,000 for

Exhibit No. 4—(Continued)

it and that he has paid no portion of it. After almost four years we have now procured a decision to that effect. If there had been any merit in the present charges, in point of law or fact, ample opportunity has been had to prove it. We are now, we respectfully submit, entitled to a judgment.

We have no desire to prolong a letter-writing debate with counsel for defendant nor to impose such burden upon your Honor, but we are as a matter of courtesy sending a copy of this letter to counsel for defendant.

Very truly yours,

/s/ A. W. ASHBURN,  
of Newlin & Ashburn.

EXHIBIT No. 5

REPORT OF THOMAS McMANUS TO SENATE  
INVESTIGATION OF 1933

The borax industry of the world was completely revolutionized, immediately subsequent to 1927, by the discovery in the Mojave desert in Kern County, California, of a great deposit of natural sodium borate—to date the only known deposit of this material in existence. This concentration, limited to a small area located seven miles northwest of Kramer and twenty-eight miles due east of the town of Mojave, is estimated by competent engineers to contain enough borax to meet all the industrial,

## Exhibit No. 5—(Continued)

commercial and domestic requirements of this most valuable chemical element for the entire world over a period of more than five hundred years.

It is impossible to estimate accurately the potential value of this single source of pure borate, but the series of activities initiated by the British Borax Trust soon after discovery of the deposit by Dr. John K. Suckow of Los Angeles, and culminating in the bankrupting of the Suckow Borax Mines, Consolidated Inc., through the most flagrant chicanery, offers a striking indication of its worth.

Prior to location of the Kramer deposit, Borax Consolidated, Ltd., of London, England, and its subsidiaries, had expended some eighteen millions of dollars in mines in South America and Asia and in development of the borax industry in Death Valley, Calif., but these immense workings, together with all the other large borax refining operations throughout the world, were abandoned following the Mojave desert operations instituted by Dr. Suckow. Before the Suckow discovery, borax was produced by an expensive process in which colemanite—the substance found in the historic Death Valley area—was compounded with soda ash. This and other processes were rendered completely obsolete by the finding of the Kramer deposit.

When Dr. Suckow gave the world a virtually unlimited supply of pure sodium borate, he innocently precipitated what has developed, on the part of the British borax monopolists, one of the most vicious programs of persecution against an individual, as

## Exhibit No. 5—(Continued)

a means of annihilating competition with their own interests, that has been recorded in the annals of modern industry.

Borax is essential to life today. It is used in the manufacture of enamels for metal articles such as bathtubs, kitchen fixtures, cooking utensils and laboratory equipment. In the textile industry it is utilized in dyeing as a means of rendering certain cloths fireproof. It is valuable as a flux for welding and brazing metals, and is important in the tanning industry. It also is used in the making of certain type of glass, in the smelting of precious metal concentrates, in assaying, and it has many uses in the home. Complete information on this subject is contained in United States Department of Commerce Bulletin No. 106499, dealing with the general use of borax. The utilization of natural sodium borates increased from three thousand tons in 1921 to 174,510 tons in 1930.

Borax Consolidated, Ltd., the British monopoly, has paid more than eighty millions of dollars in dividends. At present this corporation, with the American Potash and Chemical Corporation, another British concern, is the sole arbiter of the borax business throughout the world. And no page of American industrial history has been written with a darker record of unmerciful aggression than the story of the vicious tactics indulged by Borax Consolidated to stifle all potential competition. From the time that Dr. Suckow discovered borax in the Kramer district he has been pilloried by trumped-



## Exhibit No. 5—(Continued)

up litigation that has been climaxed by proceedings through which the monopolists were able to force an adjudication of bankruptcy of his interests—and this without producing a single legitimate claimant to substantial insolvency.

Upon the original discovery of a colemanite borax drift of several feet thickness, in the Kramer district, Dr. Suckow organized what was known as the Suckow Chemical Company, in partnership with the Pacific Coast Borax Company (a Borax Consolidated tenacle) and he later sold his  $\frac{1}{4}$  interest in these colemanite workings for \$150,000.00. At that time he had secured locations covering virtually all of the borax bearing lands in the Kramer area. Through litigation he was deprived of a great portion of the borate deposit, and finally was forced to compromise with the Pacific Coast Borax Company and accept an agreement awarding him an undivided one-half interest in 240 acres, in which now is situated the present Suckow Borax Mines Consolidated, Inc.

When Dr. Suckow undertook to develop this 240-acre tract, expecting to be able to agree with the Pacific Coast Company upon equal division of the ore, he met with determined and bitter opposition from the Pacific Coast Company. Advised by his attorneys, Lawler & Degnan, that he was within his rights in instituting development, he began workings, and discovered what is declared to be the only and most valuable deposit of tin-calconite (or crude natural borax) in the entire world. The Pacific



## Exhibit No. 5—(Continued)

Company adopted the attitude that no person or other company could operate on the property covered by the undivided-interest agreement without its consent, and, definitely refusing to grant this, immediately launched a campaign of persecution against Dr. Suckow that has dragged him through a receivership, and ultimately, bankruptcy.

As an indication of the length to which the Pacific Company was prepared to go in its determination to throttle and kill all competition, the author of this report, Thomas W. McManus, who served as Receiver for the Suckow interests pending adjudication of the bankruptcy proceedings, was informed by Mr. Jenifer, Vice Pres. & General Manager of the Pacific Company that this concern had offered Dr. Suckow an independent income for life on the condition that he would not attempt to develop the borax lands in which he owns the one-half interest.

My appointment as Receiver, under a petition for involuntary bankruptcy brought in the United States District Court in Los Angeles against Dr. Suckow, was made on July 2, 1931. Information of my appointment came to me in a long distance telephone message from Walter A. Moses, the attorney who brought the bankruptcy petition.

The subsequent maneuvers of Attorney Moses, throughout the constant campaign of intrigue against Dr. Suckow, reveal a striking phase of the borax monopoly's purposes and the ends to which its hirelings will proceed to encompass those purposes.

## Exhibit No. 5—(Continued)

Upon notifying me of my appointment, by Federal Judge Hollzer, Attorney Moses advised me, with great emphasis, that I ought not to engage an attorney for the receivership until I had conferred with him. He asserted baldly that it would be greatly to my personal advantage to retain him as counsel.

The same day I received a telephone call from the Pacific Coast Borax Company with a request that I receive a visit from one of their officials, with the company attorney. I informed the company that I would be in Los Angeles the following day to qualify as a receiver, and that upon conclusion of this formality, would meet with them.

Attorney Moses' insistence in his telephone message seemed curiously significant at the time, and later developments disclosed that the significance was of a sinister nature.

Upon my arrival in Los Angeles I called upon Mendel Silverberg and Alex W. Davis his partner—attorneys possessing my complete confidence—and requested them to prepare the necessary proceedings for my qualification as receiver. I further suggested that Attorney Silverberg serve as my counsel as receiver for the Suckow property. He advised me not to appoint an attorney until I had familiarized myself with the situation of the receivership, and suggested that I might wish to select a Bakersfield attorney for this service.

However at my request, Attorneys Silverberg and Davis prepared my qualification as receiver,

## Exhibit No. 5—(Continued)

and when my bond was filed, I called upon Attorney Moses.

Attorney Moses inquired into my experience as a receiver. I informed him that I had had no previous experience, upon which he said he thought the Court should have appointed his nominee for this position—an experienced receiver—but as the situation stood, he wished very much to represent me as counsel, in view of his being associated for some of the purported creditors in the Suckow case, and anticipated receiving the bulk of compensation as attorney for the receiver. He stated that while he did not represent the principal creditor, the Pacific Coast Borax Company, he nevertheless was working in cordial cooperation with the company's chief counsel, Allen Ashburn.

He then pointed out to me that as a receiver my compensation would be negligible, and that if I wished to realize a valuable return for my services, I would have to be elected trustee by the creditors, and that he controlled the creditors in this election, and that, finally, if I did not appoint him as attorney, I need not expect to be elected trustee.

Attorney Moses informed me that he would produce a buyer of the Suckow property when the proceedings against Dr. Suckow were completed. From the description of the property given in the petition for Bankruptcy, I was led to believe the value was not great, and so told Attorney Moses. He replied that his potential purchaser—whose identity he would not reveal—would pay a large sum for the Suckow interests.

## Exhibit No. 5—(Continued)

This led me to pay an immediate visit to the Suckow Borax Works, and I was considerably surprised, and greatly impressed, upon finding it a well-equipped, efficiently operated plant, the smallest of three companies producing borax in the Kramer area. I appointed the plant foreman, A. Yoder, as custodian of the property, being convinced of his ability and integrity.

Upon returning to Los Angeles I met the secretary of the Suckow Company whom I found to be George S. Green, a former official of the First National Bank of Los Angeles, a former President of the National Exchange Club, and a man of fine reputation, unimpeachable character and real ability. I appointed him to keep charge over the books and office of the company during the receivership. I found that the company's books were under the charge of the Mushet Audit Company, a highly reputable firm of public accountants in Los Angeles; also that the corporation was doing a comparatively small but profitable business, and that there were few past due bills on the records.

Under my employment, the firm of E. M. Berger Company, certified public accountants in Los Angeles, made an inspection of the books of the Suckow Company, and advised me that all records were in order and there was no necessity for a complete audit, and that the statements in an affidavit by one Thomson, a former bookkeeper for the company, reflecting upon the fiscal status, were "utterly absurd."



## Exhibit No. 5—(Continued)

These findings baffles me considerable, as they gave me cause to wonder why a receiver, or any proceedings for bankruptcy should be required. I met some of the company's creditors, who informed that their relation with the Suckow corporation had been most satisfactory.

Further investigation convinced me that the action against Dr. Suckow was nothing more than a conspiracy engineered by bankruptcy racketeers in collusion with the Borax Consolidated subsidiary. This conclusion since has been bore out by facts brought to light during hearing of the court proceedings, and of these facts I propose to relate in the later portion of this report.

My immediate action, upon having assured myself that there existed no just cause of a bankruptcy petition against the Suckow Company, was to inform Judge Hollzer that this action was without merit, and that I felt any temporary difficulties that might exist could be corrected with facility. I also informed the Judge that in my opinion the crux of the entire action lay in an effort on the part of Borax Consolidated to eliminate a competitor; that my examination of the Suckow company books indicated that the corporation was solvent; and that certain statements in the petition were false.

Judge Hollzer requested me to keep a close record of any developments pertinent to the case, and if I should find any irregularities, to report them to him. This suggestion of his, which I carried out to the



## Exhibit No. 5—(Continued)

letter, is significant particularly from one angle: Later when I was in a position to furnish information substantiating my convictions of fraudulent tactics in connection with the Suckow case, the Special Master hearing evidence in the bankruptcy proceeding contrived to bring about a stipulation that I, as Receiver, was not to be called as a witness at the hearing. Neither was I given an opportunity to place before the district court facts that it is my earnest belief would have, or should have, branded the entire Suckow bankruptcy action as a deliberate program to pauperize this discoverer of the tremendously rich borax deposits that the British monopoly now is garnering millions of dollars from.

I had only one other telephone conversation with Judge Hollzer regarding this matter. At that time I told him the bankruptcy proceedings were unwarranted, "crooked," and that the men who perpetrated this action should be haled before the United States Department of Justice for investigation of their nefarious activities.

My receivership was terminated within a period of forty days, and I was able to establish for the Court that during this period the Suckow property showed a net profit of approximately \$1,500.00, in the face of the fact that international buyers of borax had become apprehensive concerning deliveries because of the reports circulated about Dr. Suckow's purported "insolvency."

It is my purpose here to delve into some of the

## Exhibit No. 5—(Continued)

facts and falsehoods that came to light during hearings held upon the Suckow bankruptcy and related proceedings, and in doing so, I wish to make my position clear with reference to my actions during the receivership. I felt that under the law it was my duty to report evidence of fraud where I encountered it—that such evidence was not permitted to be placed in the record is no fault of mine. In this position I received the moral support and friendly advice of such personages as former United States Senator Sam G. Bratton of New Mexico, who prior to his appointment as a Federal Circuit Judge was associated for a time as an attorney of record in the Suckow proceedings; also former United States Senator Samuel M. Shortridge of California; Federal Judge William P. James, and other eminent jurists and counselors. They assured me that it was my duty to report illegal actions that I discovered in the prosecution of the Suckow case, but when I attempted to have light thrown upon these illegal actions in Court, I met with rebuffs ill-chosen, in my opinion, on the part of a Special Master appointed by a Federal Court.

My findings, as Receiver acting in the interests of the Suckow properties, but having no interest in any adjustments other than fair and legal, include the following facts, together with my interpretation of them, and it is easily to be ascertained that my interpretations are concurred in by unquestioned legal authorities:

## Exhibit No. 5—(Continued)

1. At the inception of the court action against Dr. Suckow, there were in the entire world only three companies producing borate ore from the Mojave desert deposit, to-wit: the Pacific Coast Borax Company (the subsidiary of the British monopoly); the Western Borax Company, and the Suckow Borax Mines Consolidated. The other British borax concern, American Potash and Chemical Company, produces only refined borax from the brine of Searles Lake, in San Bernardino County, California, not a great distance from the Kramer natural borax deposits. The threat exerted by the powerful monopoly, in its persecution of Dr. Suckow, coupled with certain financial obstacles not germane to this investigation, now has resulted in absorption of the Western company by the Pacific company—in short, the only remaining competitor mining natural borax besides Dr. Suckow, has been bought out by the monopoly.

2. In its Death Valley operations, Borax Consolidated and its subsidiaries prosecuted an unscrupulous campaign that effectively wiped out its competitors. This combine also endeavored virtually by a bald-faced seizure to gain control of the Potash fields of New Mexico, and in this connection it is of interest to note that the monopolists were forced, through the efforts of former Senator Bratton, to satisfy a judgment of approximately one-quarter of a million dollars in which sum the courts found the British concern had injured the discoverers of the potash deposits. And while I am interested in seek-

## Exhibit No. 5—(Continued)

ing to have justice done for Dr. Suckow, there is a greater issue at stake in this matter, and that is, that unless the rights of Dr. Suckow are protected and saved to him, the Borax Consolidated will have a complete world monopoly on the borax industry, and will be in a position to dictate without fear or favor prices and all other conditions in the industry. The record of this combine will not permit the unbiased observer to expect anything but a most dictatorial and selfish attitude from Borax Consolidated, if it is permitted to throttle the last threat of competition that remain.

3. Hearing of the petition in bankruptcy against Dr. Suckow was referred by Judge Hollzer to Earl E. Moss, referee in bankruptcy, as Special Master. The hearing before the Special Master consumed thirty-three days, from September 2, 1931. Moss' findings of fact and conclusions of law were filed with Judge Hollzer's court on December 3, 1932. The expenses, presumably to the petitioning creditors, for witnesses, depositions, affidavits and attorney's fees were enormous. Yet it is a manifest fact that none of the creditors of record could meet such expenses, or even furnish creditors' bond. While this phase of the situation caused me considerable wonder at the time, it was only later that it became established that Victor C. Emden of Los Angeles financed the bulk of the incidental activities related to the bankruptcy and other actions, even going to Missouri for the Borax Trust in connection with an equity suit entirely unrelated to the



## Exhibit No. 5—(Continued)

bankruptcy matter, to secure one affidavit in 1930, that the affiant, in 1933, deposed was false in many respects, saying that he had signed his name to a "piece of paper" in 1930, which was the affidavit that Victor C. Emden secured, and that affiant did not know what was asserted in this particular affidavit.

4. After the hearing before the Special Master had been in progress some time, and I had made several trips to Los Angeles from Bakersfield to appear as a witness (having originally been subpoenaed), I called upon Mr. Moss and advised him that I was in possession of certain information reflecting upon the integrity of the proceeding that I wished to present to him; that I was not represented by an attorney in the hearing, but that I would like to present these facts. He ordered me from his office and told me that such facts as I had would have to be presented in open Court, which course I assured him I would be very glad to follow. At this time Senator Shortridge and United States Judge Frank H. Kerrigan of San Francisco both counseled me that it was my imperative duty to place any such facts as I had learned before the Court. But the same day that I called upon Special Master Moss, he summoned before him the Attorneys in the case, and caused to be brought about a stipulation that the receiver—myself—should not be called as a witness in the hearing.

5. Among the flagrant discrepancies in the carefully planned testimony adduced during the hear-



## Exhibit No. 5—(Continued)

ing, that of some of the "expert" witnesses stood forth as an insult to American jurisprudence. Hoyt Gale testified as expert for the Western Borax Company, and in a report on record before the State Corporation Commissioner brought out that the Western Borax property in the Kramer area was worth many millions of dollars. Yet the "experts" placed values as low as \$45,000.00 on the Suckow properties, which unimpeachable geologists estimate to be worth more than the Western Borax locations.

6. I think it pertinent to direct attention, at this point, to the record of the so-called "creditors" in the Suckow Bankruptcy action. The original petition was signed by the Pacific Iron & Steel Company, Inc., alleging a claim of \$1,200.00. Later this company withdrew from the petition, and it since has been disclosed that this claim was purchased by L. H. Wilson to use as a weapon in the bankruptcy proceeding. H. C. Foltz, operating as the Foltz Electric Company, also signed the petition but received payment of his account with the company. L. E. Ellington alleged a claim of \$88.00 but the Suckow Company produced a cancelled company check made out to Ellington, and endorsed by him as payment for his account. The original petitioning "creditors" were replaced by Suckow stockholders who claimed their stock had been sold to them illegally. Among these was L. H. Wilson, who had a suit on record in the Los Angeles County Superior Court against the Suckow Company when

## Exhibit No. 5—(Continued)

the bankruptcy proceedings were instituted, and who joined the latter action as a petitioning creditor. Wilson previous to this time had engaged in a dispute with Dr. Suckow and admitted to me that it was his purpose to gain control of the Suckow mines. H. M. Nice and S. B. Salverson both were former employes of the Suckow company who joined the proceedings as substitute petitioning creditors. It was established that the stock that had been turned over to them consisted of shares personally owned by Dr. Suckow, and so far as has been established, this procedure was not illegal.

7. Along with fictitious creditors and conflicting testimony, the parade of the Suckow bankruptcy complainants produced some remarkable affidavits. Similar documents were introduced in an equity suit brought by Borax Consolidated, Ltd., against the Suckow Company, as the result of Dr. Suckow's workings in the undivided 240-acre tract. J. R. Hughes, one-time plant superintendent, of the Suckow mines, on March 23, 1933, refuted a purported affidavit attributed to him three years previously and which was made much of by Borax Consolidated at the earlier date. The following is quoted from an affidavit signed on every page by Mr. Hughes on March 23, 1933: "Affiant states with reference to the affidavit aforesaid, dated the 29th day of April, 1930, that at about the date thereof, affiant discussed with Victor C. Emden the facts sought to be incorporated into an affidavit and there was incorporated into a form of affidavit facts

## Exhibit No. 5—(Continued)

somewhat similar to the facts stated in the said affidavit of April 29, 1930; that the same did not conform to the facts and for that reason this affiant refused to sign the same as prepared; that he thereupon suggested certain corrections in the form as submitted and requested that the same be redrafted in accordance with the truth; that this affiant was in a hurry to leave and at the request of the party seeking the said affidavit, this affiant signed a blank piece of paper with the express understanding and agreement that the substance of the affidavit to be incorporated in a true statement of the facts and affiant's signature affixed thereto; that affiant did not see the said "affidavit" after it was rewritten until he was shown what purported to be a copy thereof this 23rd day of March, 1933; that he has carefully read the same and finds that it contains many discrepancies and inaccuracies to which this affiant would not swear . . . Victor C. Emden claimed to know those things and he was the one interested therein . . . Affiant has never understood that he was doing anything to deprive Dr. Suckow of his property."

And here is another one by Hughes: With reference to the purported affidavit dated the 5th day of June, 1931, affiant states that at the time of his return to California some time prior to the date of the said purported affidavit, affiant was desperately ill; that said Emden came to see this affiant again and asked him to sign a paper for the purpose of effecting the removal of Dr. Suckow

## Exhibit No. 5—(Continued)

from the management of the mine in conjunction with other stockholders; that affiant didn't read or remember of signing any affidavit in the bankruptcy proceedings; that affiant never heard of it nor was it ever suggested to him that there was an effort to force the company into bankruptcy . . . That affiant left the employ of the Suckow Company in 1929 and had not been on the property since that time and was in no position to give a report as to the condition of the property as it existed at the later date." . . . Hughes' original "affidavits" which he later refuted, were designed to minimize the value of the Suckow Mines.

8. Beyond all doubt the most astounding claim allowed by Special Master Moss against the Suckow Company to establish its purported "bankruptcy" was one of \$76,922.32 in favor of Dr. Suckow himself. Dr. Suckow denied this claim, emphasizing that he had advanced certain sums for development of the mines, prior to the organization of the company, and that he was to receive his return on these advancements in stock, and had in fact done so. In my entire service as receiver, Dr. Suckow at no time claimed such amount; yet this false claim, based upon allegations in a previous court suit, was included by the Special Master and resulted in a total of liabilities against the Suckow Mines exceeding the assets which the Master saw fit to allow and fix. As a matter of fact, records of the Suckow Company, and statements of its officers and members, indicate that no such sum as \$76,922.32 ever



## Exhibit No. 5—(Continued)

was received or expended. Affidavits to this effect were recorded, but were ignored by the Special Master and by Judge Hollzer in his findings. Attorney Moses, for the petitioners, knew that no such sum ever was expended on the Suckow property. This figure was arrived at as a claim in favor of Dr. Suckow through an error made in an affidavit in another proceeding, by Dr. Suckow's own attorney, Walter F. Haas.

9. Another phase of this proceeding that hardly can be adequately described even by "astounding" involved the values of borax ore as fixed by the Court in different actions. In an equity suit brought by the Pacific Coast Borax Company Judge Hollzer issued an order on April 19, 1932, for joint operation of the involved property by the Suckow Mines and the Pacific concerns, and placed the value of the ore underground in the Suckow mine at \$21.89 a ton which was virtually the full amount that the ore was selling for in calcined form in the European markets. But when the time came for adjudication of the bankruptcy action, Judge Hollzer confirmed the findings of Special Master Moss, which placed the value of this very same ore at \$2.50 per ton in the ground. In other words, the Court fixed a value on the ore, in the Equity proceedings, that would prohibit Dr. Suckow from working the property and making a division with the Pacific Company, at the rate of \$21.89 a ton; whereas in the bankruptcy action the court confirmed a valuation that would have allowed the Suckow Mines to operate



## Exhibit No. 5—(Continued)

on a basis that would have obviated any possibility of insolvency.

10. Efforts properly to appraise the value of the Kramer borax deposits have led to widely divergent estimates, but there is no question that the insignificant valuations placed upon the Suckow property, and as allowed by the Special Master and Judge Hollzer, are entirely without the pale of reasonable consideration. In his findings, reported to the Federal Court, Mr. Moss assumed that the value of the Suckow Mines could be appraised on the basis of earnings during the depression years of 1930 and 1931. If this rule were applied generally to American business and industry, it is unquestionable that 95% of the companies and enterprises of the country would be found to be worthless; as a matter of fact, the Suckow Company earned a modest but substantial net revenue during these years, which the Master adopted as a yardstick calculated to represent ten per cent of the total valuation. The most conservative estimate that I would conceive, with reference to the Suckow Mines, in the light of the experience as receiver and of various valuations given by engineers, would place the intrinsic worth of Dr. Suckow's holdings at well over one-half million dollars with a potential earning power of millions of dollars, which surely ought to be given consideration in any logical appraisal.

It seems to me a travesty that a development of this nature should be bankrupted, and its discoverer and owner pauperized, through the unscrupulous

## Exhibit No. 5—(Continued)

manipulations of a foreign controlled monopoly that will brook no competition—and that this end should be obtained on the strength of fictitious claims. And it must be borne in mind that if the Suckow Mines had not been hampered by this campaign of aggression on the part of Borax Consolidated, through its subsidiaries, the earnings of the property would have been far in excess of the actuality. In the face of this fact that in this limited area of desert lies the only known source of pure borate in the world, and of the fact that Dr. Suckow owns in fee and by agreement a major interest in this essential chemical development, Special Master Moss, in his opinion submitted to the Federal District Court saw fit to observe: “The value of the bankrupt’s interest in 240 acres will therefore be fixed at \$75,000.00, the forty acres owned in fee simple at \$4,000.00, and the machinery and equipment at \$15,000.00.

This opinion on the part of the Special Master seems the more remarkable in view of his own declaration, in the recorded Findings, that, “The opinion of Mr. Jensen, one of the bankrupt’s witnesses, as to the extent of the testimony concerning this unknown quantity, is 857,568 long tons, to which he adds an ore reserve of 220,392 tons, a total of 1,077,960 long tons, the value of which he estimated in three different ways: first, by assuming the production and sale of 9,000 tons of calcined material per year at a profit of \$6.54 per ton, one-half of which would be \$29,430.00, which he capitalizes at ten times, or a total value of \$294,300.00. He also

## Exhibit No. 5—(Continued)

assumes the existence of 1,000,000 tons at a value of \$1.00 per ton for the raw ore in the ground, the bankrupt's one-half interest in which would be \$500,000.00, to which he adds certain speculative values and \$125,000.00 for the forty acres owned outright by the bankrupt, arriving at a valuation of \$625,000.00. He next adds \$125,000.00 for the forty acres to the sum of \$294,300.00 previously mentioned, arriving at a value of \$419,300.00."

Having given Mr. Jensen's estimates the stamp of approval, and designating them as "probably as accurate as any of the testimony concerning this unknown quantity," the Special Master proceeds, a few paragraphs further along in his opinion, to adopt arbitrarily a valuation of \$75,000.00, plus \$4,000.00, plus \$15,000.00.

11. In his Findings of Fact and Conclusions of Law, in the bankruptcy proceeding, filed with Judge Hollzer, Special Master Moss found that "The bankrupt at the time of the filing of the petition in bankruptcy herein owed debts in the sum of \$173,897.93 and has assets of the fair valuation of \$113,471.28, and was insolvent." The asserted "debts" cited by Special Master, it should be noted, included \$97,955.00 allowed as a claim against the company in favor of Dr. Suchow—the claim that the physician repudiated on the witness stand and in all of his conversations and correspondence with me—and the claim backed by the attorney for the purported "creditors" upon an inadvertant error in an

Exhibit No. 5—(Continued)

affidavit prepared in another proceeding by Dr. Suckow's own counsel.

It was in this same document that the Special Master, among his conclusions of law, recommended that an order be issued by the Federal Court adjudicating the Suckow Borax Mines Consolidated, Inc., a bankrupt—a conclusion that later was confirmed by Judge Hollzer.

It is worthwhile to take the Master's valuation of all the equipment and buildings and development at \$15,000.00. It is part of the record that Dr. Suckow expended approximately \$75,000.00 on this property before the incorporation of the company; that the stockholders invested and expended approximately an additional amount of \$60,000.00, and probably \$20,000.00 additional was spent from the earnings of the company in developments and improvements. The developments and improvements consist of a double compartment shaft of approximately 435 feet, with a modern electric hoisting equipment, complete calcining plant with equipment, a number of buildings used for living quarters by employees—in fact, a complete plant which evidence indicates shows an investment of \$170,000.00. In addition to these investments, the Master found that Dr. Suckow loaned the corporation \$76,922.43. If this was true, it would make the investment amount to \$246,922.32, which for analectical analysis of the situation rights off for the sum of \$15,000.00. It must be remembered that all this



## Exhibit No. 5—(Continued)

time this concern has had to pay these enormous legal expenditures, and still shows a profit.

12. In his report to the Court, the Special Master allowed the Pacific Borax Company a claim of \$26,446.88, deemed to represent the value of one-half of the tonnage of ore taken from the jointly owned undivided land in which Dr. Suckow operated the borax works during the period September, 1927, to June 30, 1931, when the petition in bankruptcy was filed. Prior to launching the borax development on the jointly owned property, Dr. Suckow endeavored with every possible effort reach an understanding with the Pacific Company regarding the division of ore to be taken from the Suckow Mines, but the company not only refused to meet any fair and equitable terms offered by the Doctor, but placed every manner of impediment in the way of his program of development.

13. In his final adjudication of the proceedings, Special Master Moss recommended to the Court a judgment in excess of \$54,000.00 against Dr. Suckow asserted to represent claims and costs. This judgment together with that ordering the bankruptcy, now is on appeal, and while it is the sincere belief of eminent authorities who have become interested in this case from unselfish motives that ultimately justice will be accorded the Suckow Mines; while these proceedings are being drawn out, Dr. Suckow himself has been reduced to penury; he has mortgaged all his real and personal property in an effort to meet the financial drain imposed by the legal



## Exhibit No. 5—(Continued)

machinations of the borax trust; and attempts to permit him to retain possession of the Suckow Mines pending settlement of these issues in the higher courts were met by the Special Master with the fixing of a prohibitive bonds, notably a super-sedeas bond of \$63,000.00, ordered by the Court upon the Master's recommendation to stay execution of judgment pending appeal.

It should be cited, at this juncture, that the application for receivership was granted upon posting a bond of only \$500.00, and when attorneys for the alleged bankrupt sought to have the creditors' bond increased to \$3,000.00, the petitioners, through their counsel, Attorney Moses, refused to comply with this proposal.

In a report on this case written August 29, 1933, I find that at the time the judgment was given against Dr. Suckow, and after he had been declared a bankrupt by the Federal Court, the Suckow Borax Mines had orders for "approximately \$150,000.00 worth of borax that he (the doctor) cannot fill and since the absorption of the Western by the Pacific Coast Borax Company, there has been a great demand on Suckow for borax." Here is presented a picture of an operative property equipped to take care of business that would more than meet not only its legitimate obligations but all of the cooked-up fictitious "claims" against it, and at the same time being deprived of operation of the mines through the legal subterfuge of Borax Consolidated, Ltd.

## Exhibit No. 5—(Continued)

The same report states that, "The United States Attorney's office (in Los Angeles) developed the fact that the proceedings against Suckow were financed by Victor C. Emden, a very rich racketeer in Los Angeles."

In my most sincere opinion, based upon my knowledge of the entire Suckow proceedings, if the court had accepted from the report I wished to submit in the interests of justice, the Suckow Borax Mines Consolidated never would have been adjudged bankrupt. The burden of this long, torturous trial before a referee in bankruptcy would, in my belief, force bankruptcy upon any business of this magnitude, regardless of how well managed it might be. The matter now is on appeal, and awaiting the findings of a higher court.

I should like to emphasize again that the issues in this series of actions involve more portentous conclusions than fixing the status of the Suckow Borax Mines. They involve a widespread proposition, whether a premeditated campaign by a foreign corporation to eliminate legitimate competition in American industry can be sustained. And whether attorneys at law successfully can prosecute fictitious proceedings and escape the severe censure of the Federal Courts, in these practices. And whether individuals or corporations interested in the purchase of property can convert the processes of the bankruptcy court to force a sale on a sacrificial basis.

It must be emphasized that if the Special Master

Exhibit No. 5—(Continued)

was not on a fee basis, and if it had not been to his financial advantage to find the corporation bankrupt, that a more careful inquiry would have been made in the alleged claims against the Suckow Company, and there would not have been exhibited on the part of the Master an almost unquenching zeal to force into bankruptcy a concern that in fact was truly solvent and in much better financial condition than a great majority of our business concerns of this country during this tragic depression.

I think that possibly it would be well for the Courts to more carefully view the opinions of these men whose fees are many times greater than the salaries received by the Judges of the Federal Court.

Respectfully submitted,

THOMAS W. McMANUS.

EXHIBIT No. 6

In the District Court of the United States,  
Southern District of California,  
Central Division

Before The Honorable Earl E. Moss, Referee in  
Bankruptcy.

No. 16938-H

In the Matter of SUCKOW BORAX MINES CON-  
SOLIDATED, INC., a corporation,  
Bankrupt.

ANSWER OF BORAX CONSOLIDATED, LTD.,  
TO PETITION FOR ORDER TO SHOW  
CAUSE WHY TRUSTEE IN BANKRUPTCY  
SHOULD NOT EXECUTE AND DELIVER  
LEASE

Now comes Borax Consolidated, Ltd., respondent herein, and expressly reserving its objections to the summary jurisdiction of the above-entitled court heretofore made in this proceeding and also the objections to summary jurisdiction made contemporaneously herewith, appears specially herein for the purpose of contesting the jurisdiction of said bankruptcy court herein, and to that end answers the said "Petition for Order to Show Cause Why the Trustee in Bankruptcy Should Not Execute and Deliver a Lease of the Entire Alleged Bankrupt Estate" herein, as follows:

I.

The said petition seeks an ouster of respondent from its present joint possession, in common with

## Exhibit No. 6—(Continued)

the trustee, of the mine site and other property owned by the bankrupt and respondent in cotenancy,—a thing which respondent alleges and believes the court has no jurisdiction to authorize or direct. The questions raised by this petition are involved in respondent's pending appeal (hereinafter mentioned) and are therefore matters over which this court does not have jurisdiction at this time.

Respondent further alleges, upon information and belief, that the said alleged offer of Sam W. Small (whose relation, if any, with John K. Suckow, and whose ability to perform, is undisclosed) has been procured and presented for the purpose of assisting in working out an ulterior object of John K. Suckow, namely, coercing this respondent into purchasing the properties of the bankrupt corporation and the said Suckow at an exorbitant figure, and secondly, to avoid the entry or collection of a judgment in favor of plaintiff against John K. Suckow in an amount of more than \$41,000.00 plus interest, which is about to be entered in the equity cause mentioned in the petition herein; that the charges of monopoly and fostering of litigation for monopolistic purposes which are contained in paragraph XI of the said petition are likewise made for said ulterior and sinister purposes.

And respondent further says that it does not have, maintain or control any worldwide or other monopoly in the mining, refining, distribution or sale of borax or borate products or otherwise or at all; that it neither has nor controls as much as one-



## Exhibit No. 6—(Continued)

half of the borax or borate products produced in the United States or of the amount thereof produced or consumed in the world; that neither the said John K. Suckow nor the said bankrupt corporation is or has at any time been a competitor of respondent with respect to refined borax; that respondent's chief competitors are, and for a long time have been, American Potash & Chemical Company, West End Chemical Company and Pacific Alkali Company, all of whom produce borax as a by-product of a principal business of extracting potash (in the first two instances) or soda (in the Pacific Alkali instance) from the brines of California lakes; that the said American Potash & Chemical Company is able to and long has fixed prices of borax; that the said prices have never been increased since the commencement of the said equity action and that the only changes which have occurred have been downward; that the price today is the lowest in the history of the industry; that the said American Potash & Chemical Company is now threatening ruinous competition and further decreased prices.

Respondent further says that the said equity cause No. C-107-H was not commenced or maintained for any of the purposes alleged in the petition or for any other purpose except the collection of a legitimate debt owing to it and declaration and enforcement of a lien incidental to the fixing and enforcing of said debt; that it, the said respondent, did not initiate or have any part in the initiation

## Exhibit No. 6—(Continued)

or maintenance or prosecution of this bankruptcy proceeding; that the charges that it had any part therein are made for the said ulterior purposes hereinbefore set forth.

That, as hereinafter shown, the said John K. Suckow has in the past endeavored to perpetrate frauds upon respondent (as shown by the final adjudications hereinafter mentioned); that he and the bankrupt corporation as his successor ousted and maintained an ouster against respondent with respect to the jointly owned property, and during the period of the ouster extracted, removed and appropriated to his and its own use a large quantity of ore, one-half of which belonged to respondent; that he and it refused to pay respondent for any portion thereof, and shortly before the trial of the said equity action, wherein their accountability was to be determined, the said John K. Suckow caused the records of the said bankrupt corporation to be changed so as to eliminate therefrom all credits theretofore existing in favor of Pacific Coast Borax Company (which is respondent's agent with respect to the said jointly owned property). Respondent further alleges, upon information and belief, as hereinafter set forth, that during the pendency of the said equity action, and particularly since the decision of Judge Hollzer rendered on December 28, 1933, the said John K. Suckow has made transfers of all of his real properties and stocks in corporations in the above-mentioned equity action in and by its answer filed therein; according to in-

## Exhibit No. 6—(Continued)

formation and belief that the cost of so mining and bringing the said ore to the mouth of the shaft would not be less than \$1.50 to \$2.00 per ton and therefore the result of said lessee's mining and setting aside ore for the alleged benefit of respondent would mean the accumulation of a claim of lien in favor of the lessee or the bankrupt against the respondent in a sum of approximately twice the amount conceded by them to be the net worth of the ore at the mouth of the shaft.

## VIII.

Respondent denies each and every allegation in paragraph IX of said petition contained.

## IX.

Respondent admits that refined or commercial borax is a household article of general use, but denies that this respondent maintains and controls or maintains or controls a world-wide or any monopoly either in the mining, refining, distribution and sale of borax or the mining, refining, distribution or sale of borax, or otherwise or at all; denies, according to information and belief, that the total requirement of the world market for refined borax is 200,000 tons a year or any other amount in excess of approximately 150,000 to 160,000 tons a year. Admits that the borax product mined and sold by this respondent all comes from the Kramer District in Kern County, California, but denies that all or

## Exhibit No. 6—(Continued)

any of its product is mined and sold, or mined or sold, in the enjoyment of a great or any monopoly, or that the said respondent has or enjoys a great or any monopoly in the mining and sale, or mining or sale, of borax, or in any other respect whatever. Admits that the bankrupt corporation was mining said contenance property up to the making of said order for joint operation on April 19, 1932, but denies that it conducted any mining in the said property at any time thereafter and alleges that at all times intervening between the said date and the adjudication of bankruptcy herein the said bankrupt voluntarily refrained from mining in the said property or otherwise taking advantage of the terms of said order. Denies that the said bankrupt was at all or any of the said times, or at any other time, engaged in refining or that it did refine all or any of the product of said property. Denies that it has at any time offered respondent any competition whatever in refined borax or that it has been a competitor in refined borax, or that it offered the only competition of respondent in world trade in refined or other form of borax. Denies that calcined borax is refined borax. Denies that this respondent has or had gradually or at all acquired the properties of all or any of its competitors, except that it has recently purchased the property of one of its competitors; and in that connection alleges that respondent produces and/or markets less than one-half of the production of borax in the United States and less than one-half of the world's production



## Exhibit No. 6—(Continued)

and/or consumption of the same; that the bankrupt herein is not and never has been respondent's chief competitor; that American Potash and Chemical Company, commonly known as Trona Corporation, is and long has been respondent's chief competitor; that the said Trona Corporation maintains a large and expensive plant at Searles Lake, California, and there produces borax as a mere by-product of its principal business of extraction of potash from the waters of said lake; that West End Chemical Company is another substantial and active competitor of respondent and it also produces borax as a by-product from the waters of Searles Lake; that another competitor of respondent is Pacific Alkali Company, which maintains and operates a plant at Bartlett, California, and there produces borax as a by-product of its principal business of producing soda from the brines of Owens Lake. Not only does respondent not have the greater volume of business but it is at the mercy of Trona Corporation and its other competitors as to prices. Production of borax as a by-product enables them to dictate prices and when Trona concludes, as it has done in the past, to reduce the price of borax there is nothing for respondent to do except to meet the new price in order to hold its business.

Respondent denies that the commencement and/or maintenance of said equity suit which is mentioned in paragraph XI of the petition herein was done to or for the interest of any monopoly, either under



## Exhibit No. 6—(Continued)

the control of respondent or otherwise or at all, but on the contrary alleges that, as shown by the annexed opinion of Judge Hollzer, the said action was a bona fide effort to recover the value of the ore belonging to respondent which had been wrongfully appropriated by the bankrupt and John K. Suckow to their own use and benefit. Respondent further denies that it initiated any litigation mentioned in the said petition, except the said equity cause No. C-107-H, and, assuming that the phrase "this litigation" found in paragraph XI of said petition means the said bankruptcy proceeding, respondent specifically denies that it initiated or had any part in the initiation or maintenance or prosecution of the same. Denies that all or any of said alleged things, to wit, the initiation of litigation, were or was done all and solely, or all or solely, for the purpose of maintaining its or any world-wide or other monopoly, either as an English corporation or otherwise or at all, or that said or any of said things were or was done for the purpose of oppressing, harassing and suppressing, or oppressing, harassing or suppressing its sole competitor, or any competitor, either the bankrupt corporation or any other person, firm or corporation, or for the purpose of removing such or any competitor from the field of world or any other competition. Denies that said bankrupt is or has at any time been respondent's sole competitor and denies that all or any of said things were done for the purpose "that he might be removed from the field of world competition" or

## Exhibit No. 6—(Continued)

for the purpose of removing the said bankrupt from the field of world competition; and, assuming that the word "he" found in the above quotation from the petition refers to John K. Suckow who has at all times dominated the bankrupt corporation, respondent further denies that all or any of said things were done for the purpose of oppressing, harassing or suppressing the said John K. Suckow either as a competitor or for the purpose of removing him from the field of world or other competition, or otherwise or at all.

Respondent further denies that since this litigation was started or at any time since the commencement of said equity cause No. C-107-H in March, 1930, the price of borax has risen steadily or at all. In this connection respondent further alleges that there have been at no time since March, 1930, any changes in the price of such refined or commercial borax, except in a downward direction and that the price today is the lowest in the history of the industry; that the said Trona Corporation is now engaged in enlarging its plant to an extent which will enable it alone to produce more than one-half of the world consumption of borax; and that it has threatened and is now threatening to market 80,000 tons of borax per year at the expense of other distributors in the industry and regardless of the establishment or maintenance of reasonable prices therefor.

Respondent denies that it has heretofore or that it is now harassing and interfering with or harass-

## Exhibit No. 6—(Continued)

ing or interfering with petitioner either in "his" or its management and operation or management or operation of said borax properties, or any of them, or that it is doing or has done any of said things for the purpose of maintaining a British or any monopoly of an American or any other product. Denies that it has threatened and attempted or threatened or attempted to intimidate petitioner's customers, or any of them, and/or the purchasers, or any of the purchasers, of the product from the borax deposits held in cotenancy. Denies that it has demanded from time to time, or at all, that petitioner disclose the names of his customers, except as such demands are incorporated in the bill and other proceedings in the above-mentioned equity cause; and in that connection respondent alleges that as the co-owner of each and every parcel of ore which is extracted from the said mine it has the legal right to participate in the sale, fixing of prices, marketing and delivery thereof, and is entitled not only to know the names of the buyers but also to participate in the fixing of prices and terms. Respondent denies that it has from time to time, or at all, demanded that petitioner join with it, or otherwise, in the maintenance of a world-wide, or any, monopoly, either by determining the output, fixing the price and regulating the marketing, or determining the output or fixing the price or regulating the marketing of all or any of the products of the Kern County borax deposits, or any of them, or that petitioner has declined so to do.

## Exhibit No. 6—(Continued)

Further referring to the allegations of paragraph XI of said petition, respondent alleges, according to information and belief, that this proceeding, and particularly the charges of monopoly and of initiating the instant bankruptcy proceedings, contained in the said petition, are now made, as they frequently have been made in the past, in bad faith and for the purpose of coercing this respondent into buying out the properties of the said John K. Suckow and Suckow Borax Mines Consolidated, Inc., at a high price, and for the secondary purpose of avoiding, directly or indirectly, the entry of the judgment against the said John K. Suckow in the said equity cause No. C-107-H in a sum which, computed according to the said opinion of Judge Hollzer, Exhibit "B" hereto, amounts to \$41,109.49, plus interest. That the same charges have been incorporated in a letter written by the attorney for the said bankrupt and the said John K. Suckow under date of January 30, 1934, and addressed to the said Honorable Harry A. Hollzer pertaining to the said equity cause and requesting that on account of such charges the court not only refuse to sign the findings, but also dismiss the action. That because of said ex parte representation to the Judge, respondent's counsel, under date of January 31, 1934, wrote a letter to him, a copy of which is hereunto annexed, marked Exhibit "C" and made a part hereof. Respondent further says that the said charge of actual or attempted monopoly has been made orally or otherwise at practically every stage of the



## Exhibit No. 6—(Continued)

said equity cause, which has been pending since March, 1930, but that no evidence to that effect has ever been offered or produced by or on behalf of the said bankrupt corporation or said John K. Suckow, except the uncorroborated conclusions and affidavits of the said John K. Suckow and, as above set forth, the said charges are untrue.

In substantiation of the foregoing allegations, respondent further shows that the said John K. Suckow, personally or through statements made in open court; that the price of ore therein fixed was by the court predicated principally upon stipulations made in open court by the attorney for the defendants as to prices disclosed by the books of the defendant; that immediately after the making of the said order for joint operation the said bankrupt corporation refused to operate under the same and, as hereinbefore set forth, never sought to vacate or modify it until after the adjudication of bankruptcy herein, and its motion, when made, was denied.

Respondent further alleges, according to information and belief, that after the trial of said equity cause, both before and since the decision of Judge Hollzer on December 28, 1933, the said John K. Suckow transferred to other persons and/or corporations practically all of his real properties and his stocks in corporations, and that said transfers were made in fraud of the respondent herein and for the express purpose of preventing its collecting



Exhibit No. 6—(Continued)

the judgment which is about to be entered in the said equity cause in the sum of \$41,109.49, with interest.

BORAX CONSOLIDATED, LTD.,

By /s/ F. M. JENIFER,

Its Agent Respondent Appearing  
Specially.

NEWLIN & ASHBURN,

By /s/ A. W. ASHBURN,

Attorneys for said Respondent so  
Appearing Specially.

United States of America,  
Southern District of California,  
Central Division—ss.

F. M. Jenifer, being by me first duly sworn, deposes and says: that he is the agent of and for Borax Consolidated, Ltd. the above named respondent in the above entitled action; that he has read the foregoing Answer of Borax Consolidated, Ltd., to Petition for Order to Show Cause Why Trustee in Bankruptcy Should not Execute and Deliver Lease, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

That affiant makes this verification on behalf of respondent for the reason that respondent is a corporation and none of its officers is present within

Exhibit No. 6—(Continued)

the state of California, and affiant has knowledge of the facts set forth herein.

/s/ F. M. JENIFER.

Subscribed and sworn to before me this 6th day of February, 1934.

(Seal) /s/ EFFIE D. BOTTS,  
Notary Public in and for the County of Los Angeles,  
State of California.

District Court of the United States, Southern Dis-  
trict of California, Central Division  
United States of America,  
Southern District of California—ss.

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing is a full, true, and correct photocopy of pages 1, 2, 3, 12, 13, 14, 15, 16, 17, and 27 with verification of Answer of Borax Consolidated, Ltd., to Petition for Order to Show Cause Why Trustee in Bankruptcy Should not Execute and Deliver Lease, being a portion of Referee's Record Book, filed in my office November 8, 1934, in the Matter of Suckow Borax Mines Consolidated, Inc., a corporation, Case No. 16,938-H Bankruptcy, as the same appears from the original record remaining in my office.

Witness my hand and the seal of said Court, this 22nd day of March, A.D. 1948.

[Seal] EDMUND L. SMITH,  
Clerk.

By /s/ F. BETZ, Deputy Clerk.

EXHIBIT No. 7

[Postal Telegraph Form]

SFA979 129 Wireless via RCA

Berlin 1147

1930 Jan 10 AM 12 00

NTL Boron (Western Borax Co. 566 Subway Terminal Bldg) Los Angeles Calif

Negotiations with BCL and Trona resulted in following agreement for this year American and English competitors restrict their sales of refined material in Germany to last year deliveries Stop Maximum deliveries of German refiners fixed at equivalent of fifteen thousand tons fortyfour including borate contract with Poland Stop If German consumption increases our share up to fifteenthousand diminished by actual exports and porate deliveries to Poland hundred percent beyond that quantity our share fifty percent Stop We renounced further borate sales for this year against reduction of Tronas German quota by fivehundred tons Borax and for reasons explained by letter Stop BCL expressly bound not to supply borates to new refiners in Europe Stop German borax prices will be advanced January twentieth allround by three marks.

BORAXUNION.

EXHIBIT No. 8

[Johannes Grasshoff Letterhead]

[Stamp]: Feb 15, 1930, Received, Western Borax Co.

Hamburg, January 28, 1930

Western Borax Company,  
Subway Terminal Bldg., Los Angeles, Calif.

Nr. 169

Gentlemen,

I am referring to the enclosed confirmation of cablegrams exchanged about the conference in Berlin and hope that my cable of the 9th inst. from Berlin which was of very detailed contents has informed you about the leading features of the agreement come to with the B.C.L. and Trona.

The negotiations with the representatives of the B.C.L. took place in Berlin on the 6th and 7th inst. and have been exceedingly difficult. The results agreed on finally do not come up to the full extent of the desires of the D.B.V., which are the same as yours, but under the circumstances prevailing they have to be called satisfactory.

As expected, the B.C.L. attributed great importance to the question of crudematerial-sales through the D.B.V. At first the D.B.V. demanded a right of sale for a quantity up to 5,000 tons Kernite. This demand could not be maintained as the B.C.L., who was exceedingly well informed about the contract entered with you, indicated that the D.B.V. was entitled hereto but not obliged to you. Very surprised

## Exhibit No. 8—(Continued)

the D.B.V. asked the representatives of the B.C.L., wherefrom they had this knowledge; they answered that they had become acquainted with the contents of the contract to the full extent during their negotiations with you. This knowledge of our contract has made the negotiations extremely difficult.

The position of the D.B.V. in the crudematerial-question was complicated very much by the fact, that the crudematerial shipped by you at the time being is not of equal quality to that shipped by the B.C.L.! I do hope confidently that you very soon will be able to ship a material of the same high grade as that of the B.C.L.; but during their negotiations the D.B.V. could calculate only with the present less favorable conditions.

After the D.B.V. has come to an understanding with the B.C.L. and the Trona about maintaining uniform prices for refined material, it is naturally not possible to supply crudematerial to outsiders or factories still to be established, without their assuming the responsibility to adhere to the prices agreed upon for the refined material. On such terms we cannot of course get any new customers, as any new factory will only be able to sell her production by under-bidding the prices of the existing refiners. Besides that the B.C.L. would have retaliated by supplying her crude-material to new outside factories in Germany—she has received some inquiries already—and then these factories on their part would have disturbed again our own market of



## Exhibit No. 8—(Continued)

refined material. Of course, our as well as your interests would have been injured most seriously thereby. On the other hand, our chances to sell your Kernite to existing refiners, who have been supplied hitherto by the B.C.L. with a much superior crude-material than yours, are very poor. Nearly all parties I have approached during the last year replied that the samples and analyses submitted were so inferior as compared with the Rasorite of the B.C.L. and even the calcined Tincal of the Suckow Mines, that they would not give your material even a trial until you are in a position to ship calcined Kernite testing at least 44%  $B_2O_3$ . Under these circumstances we decided to refrain from making further sales of your Kernite to other European countries—Poland excepted—during 1930 in the hope that by the end of this year you will be able to improve your calcined material up to the standard of your neighbors. Against our renunciation to sell your Kernite outside of Germany the B.C.L. pledged not to sell to Germany boron-crudematerial for the manufacture of Borax or Boric Acid and not to make any sales of boron-crudematerial to the rest of Europe to factories still to be established.

Furthermore, it has been attained that if this year's consumption in Germany will exceed that of the year 1929 the additional quantity up to 15,000 tons, figured on crude-material containing 44%  $B_2O_3$ —including the actual export-deliveries of the

## Exhibit No. 8—(Continued)

D.B.V. of refined products and the crude-material—deliveries to the Polish customer—goes fully to the share of the D.B.V. Should the consumption in Germany during this year exceed that figure, the D.B.V. has a share of 50% of the exceeding quantity. This agreement gives the D.B.V. a good chance to sell in Germany considerably more Borax and Boric Acid than during last year.

Furthermore, the B.C.L. and the Trona have pledged not to sell in this year in Germany a larger quantity of Borax and Boric Acid than that delivered to the customers last year. The D.B.V. attained even that the representatives of the Trona consented to deduct a quantity of 500 tons from their quota in favor of the D.B.V. whereas the B.C.L. conceded to the demand of the D.B.V. to increase the export-sales in 1930 by 400 tons above the 1,600 tons delivered in 1929.

The maximum quantities which the B.C.L. and the Trona are allowed to sell in 1930 in German are 8,250 tons Borax and 825 tons Boric Acid.

Right at the beginning of the negotiations it was pointed out that an eventual agreement could only be made for the current year—in conformity with the agreement with the B.C.L. and the Trona. But the B.C.L. let it appear that probably in the fall of this year the negotiations with the Trona about the prolongation of the agreement would be taken up again, so there would be the possibility of a prolongation of the agreement with the D.B.V.

## Exhibit No. 8—(Continued)

Regarding the prices for Borax and Boric Acid the B.C.L. and also the Trona agreed to raise the selling-prices in Germany up to the level of the international market. As the lowest price for Borax granulated in 5 ton lots during the last 2 months was RM 22.—per 100 kilos carriage paid, this concession of the B.C.L. means an advance of the German selling-prices by RM 3.—to RM 25.—per 100 kilos. On account of the competition of the Italian firm Larderello the prices for Boric Acid could unfortunately not be raised for the present.

Furthermore, uniform selling-prices for Borax and Boric Acid have been fixed for all European countries and overseas.

I sincerely hope that the foregoing details of our negotiations will show you that we have practically attained our object within reach.

At this opportunity I refer to you your letter of November 26th, 1929 to Mr. Dick, which I have not answered because I wanted to wait for the above mentioned negotiations before doing so. In a discussion of the members of the D.B.V., which took place after the meeting, they have taken notice of your suggestion to extend the contract with you for further 10 years. A resolution was not taken, but in consideration of its great importance the members reserved to examine this matter with all particulars at a later date. The refiners expressed the hope that perhaps in the course of this summer there might

Exhibit No. 8—(Continued)

be an opportunity to meet you personally, either here in Germany or in America, in order to discuss this matter with you thoroughly.

Please note that I am sending a copy of this letter to Mr. Dick.

With kindest personal regards, I beg to remain

Sincerely Yours

/s/ JOHANNES GRASSHOFF.

1 enc.

G/P.

EXHIBIT No. 9

[Western Union Telegram]

San Francisco, November 16, 1932

R. C. Baker

Room 661 Roosevelt Hotel

New York City, N. Y.

Had meeting today with Blumenberg Stauffer and Sherwin Counterproposal submitted by us Friday acceptable save as herein modified for following reasons Devin contract to be one hundred fifty tons borax one hundred fifty tons ore with territory limited to Japan and its possessions Refined borax to be short ton basis thirty seven percent Crude ore long ton basis forty four percent Stop In event Devin unable sell in restricted territory allotted tonnage we to sell differential and credit them with profit on that tonnage within Japan and its possessions Stop Stauffer agrees revise contract to three



## Exhibit No. 9—(Continued)

hundred twenty five tons forty four percent per month on which they shall have deduction of three dollars seventy five cents per ton This will refund to Stauffer over contract period of eight and half years approximately one hundred twenty five thousand dollars without interest leaving balance approximately sixty seven thousand dollars of which Stauffer willing to sacrifice one half and of other half one quarter to be paid by Western and the other one quarter to be paid by us in yearly instalments over contract period Stop Stauffer further desires year option to purchase their requirements of boric acid up to twenty five hundred tons per year from us at fifty five dollars per ton in bags carload lots fob Wilmington Stop Should option be exercised Stauffer will discontinue to manufacture of boric acid and ore purchases Stop Guaranteed deduction at rate three dollars seventy five cents per ton on quota of three hundred twenty five tons per month to remain in effect Stop Stauffer states and Blumenberg confirms actual ore purchases of Stauffer during last four years have averaged per year five thousand four hundred forty four tons thirty two percent and have no ore on hand Stop Desire further understanding that sulphuric acid business of Pacific will go to Stauffer at competitive price not only for tonnage used in manufacturing Stauffers requirements of boric acid but for our own requirements as well Stop Westend agrees to counterproposal your wire fifteenth for year nineteen thirty three provided legal agreement to that end can be made stating they have no intention of presently increasing capacity and if



Exhibit No. 9—(Continued)

continuance on that basis thereafter seems desirable for industry would so continue but reserves right to increase production thereafter if no improvement in general conditions Stop Price on excess above eight thousand tons to be agreed upon Stop This wire is dictated in presence of all interested parties and according my understanding is best proposal that can be made.

NEWLIN.

Charge Stauffer Chemical Co.

EXHIBIT No. 10

[Pacific Coast Borax Co. Letterhead]  
510 West Sixth St., Los Angeles, Calif.

Private

(No File Copy)

Mr. W. Gauge,  
340 Bush St., San Francisco, Calif.

May 10, 1935

Dear Mr. Gauge:

In accordance with our conversation in San Francisco recently I am enclosing herewith translation of a short article which appeared in the Osaka Yakuhi Shimibun issued February 24. This is the article that we feel must have been definitely prompted by some utterances given the press or otherwise by somebody connected with Toa Shoji in Japan. Your comments would be appreciated.

I am also enclosing a further extract from the same paper under date of March 31, giving some figures as to certain tonnages for Japan. If the writer of this article made a guess at the figures, he

certainly guessed along the lines of some of our discussions last year with yourselves.

Possibly there is somebody in the Toa Shoji office in Japan who is giving out some partly incorrect, partly confidential information behind Devin's back, and I hope your people can run the source of these articles down and if they have any control over the source, arrange to exercise such control.

I suggest that it would be as well to destroy this letter after perusal, merely passing on to Japan the articles in question with your own carefully worded comments.

Very truly yours,

PACIFIC COAST BORAX COMPANY,

By /s/ J. M. GERSTLEY

Assistant to Vice President.

JMG-H encs

Extract of Letter from "Osaka Yakuin Shimbun"

24.2.35

### BORAX

"Raise the price of borax up to \$100.00 per ton for shipment to Japan" says a leading borax manufacturer of U.S.A. This appears absurd at a sight. But on second thoughts we fear they may do so since U.S.A. suppliers are shipping to Britain at \$90. per ton. Let us review how things have been in the past relative to borax.

It was three or four years ago that "Kernite" was first introduced into the market of Japan through the Toa Shoji. Until that time quotation for market in Japan was agreed upon at \$50. c.i.f. (granular

form). But the market was thrown into confusion by the introduction of "Kernite" in Japan. In fact, the price once declined down to \$29. making a record fall in the past. For this reason there was a brisk buying last year. On the other hands, reshipment was made to Europe from Japan through the Lieberman.

Imports in the past several years were as under:  
(per ton of 2,000 lbs.)

1934	12,267 tons
1933	8836 tons
1932	9,807 tons
1931	7,606 tons
1930	3,987 tons

Although exact amount of export to Europe during last year is unknown, it is estimated at about 2,000/-3,000 tons.

Suppliers in U.S.A. suffered not only from the keen competition among themselves, but also their markets in Europe were damaged by the reshipment on the part of Japanese importers, and in order to check further aggravation of the situation they drew up an agreement among themselves relative to price, etc., at the end of last year. From the beginning of this year they are offering at an advanced price of \$35. per ton c.i.f. (granular form). It is said that they are recently arranging allot-system for export to Japan.

Reason that the price has advanced in the market of Japan since autumn last year is due to the stoppage of shipment to Japan.

Further reason of the high tone of the market is

the report that the freight will be raised by \$2.50 as from the 20th March next.

The price of \$35. ruling since the beginning of last month (January) is still cheap when compared with the price of \$50. prior to the introduction of "Kernite" into the market of Japan.

Even if \$90. for shipment to England is taken as only a rumour, yet the price for market in Japan is still very cheap.

Advance of the price in future is quite therefore possible. Development of market is of considerable interest.

Extract from the "Osaka Yakuhin Shimbun"

31.3.35

Import of Borax into Japan will be only about  
7,000 tons a year.

On account of reshipment of the American borax to Europe and India from Japan, American manufacturers made an agreement among themselves, and they have decided to ship to Japan in less quantity at an advanced price, as previously reported.

According to a telegram received at a certain house, the American manufacturers have allotted 7,000 kilo. tons of borax for Japan as under:

C.I.B.	2,000 tons
Kernite	2,000 tons
Three Elephant	2,000 tons
K.B.	500 tons
Smith	500 tons

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Total      7,000 tons

## EXHIBIT No. 11

[Letter in longhand:]

Re the attached—Neither Stauffers nor Tronas agents had the desired clause in contract—that is why we were blocked. Our arrangements with our agents are such that we can change their prices overnight so your people's dope is all wet. Also all B.M.s present contracts provide that all further freight increases are for buyers accounts. This is true of Trona's & Stauffer's agents too—now!

I'm returning these letters to you as I don't want them on our files. I think and so does PMT that our letters to each other should not refer to agreements—gentlemen's or otherwise—other than Western United, unless in notes like this and suggest you "lose" your file copies of the attached letter.

I've just received your longhand letter of July 7th. I've no idea about Takeda or Konishi—all I know is what we get from London—we here have no direct dealings with B.M.—so I'll have to wait and see what London says.

You can rest assured that anyone insinuating our company is trying to get duties increased in Japan is talking through his hat—obviously we're interested in no duties in Japan. If you can't see that I'll be glad to explain when I see you—but I think you'll see the point.

My official letter today was not written with one eye on records and the other on your people in Japan so don't take anything I said amiss. I couldn't leave your letter on file without a reply, however.

Best regards [illegible]



July 7, 1937

Dear Mr. Gerstley:

This note and also our letters of the 2nd are not sent with any idea of "twisting the lions tail"—quite the contrary they are sent because we think present methods of selling Takeda and Konishi, the latter 600 tons, will defeat much of the good work we have done in cooperating with the various interests the past year on shipments of refined borax to Japan, also their relation to exports.

It should be obvious to you that when we advised Takeda & Konishi they and we could not secure additional tonnage because you feared exports—then shortly thereafter have your agents walk in and sell both, does your goodselves more harm than we, whether or not tonnage was sold for the manufacture of boric acid or otherwise.

We have if you will remember on no occasion approached your customers or in any other manner discredited P.C.B. Co., we felt all this in keeping with the spirit and letter of the contract which refers to competition.

In the past when you would not give us refined borax we asked for Boric Acid. Your replies to both are well known to you.

If your recent move working through Konishi & Co. and Toyama Koyaku for the manufacture of additional boric acid in Japan is a move to have duties increased in Japan, please keep in mind that Mitsui, Mitsubishi and Takeda will gain much as you will—in addition thereto exports will not be stopped.

As these and other matters do not fit in with our conversations on subjects we thought you might clear them up and let us know what it is all about. If any are confidential, state so, and your wishes will be respected.

Best regards.

W. G.

Addendum No. 49

EXHIBIT No. 12

[Pacific Coast Borax Co. Letterhead]

51 Madison Avenue, New York

Mr. Victor C. Emden,  
Essex House, 325 East 41st Street,  
New York, N. Y.

May 25th, 1935

Dear Mr. Emden:

I enclose check in your favor for \$5,000.00 being the second and final payment of your fee for services rendered, as outlined in the recent agreement. Will you kindly receipt and return the enclosed voucher and oblige.

I understood from our phone conversation that you were leaving New York next week, presumably for return to the Coast and hope that you will have an enjoyable trip West.

Yours very truly,

PACIFIC COAST BORAX COMPANY,

/s/ F. T. WINTERS.

FTW:K.

## EXHIBIT No. 13

## RECEIPT AND RELEASE

In consideration of the payment to the undersigned of the sum of Ten Thousand Dollars (\$10,000.00) by Pacific Coast Borax Company (\$5,000.00 of which has been paid upon delivery of this instrument and the remaining \$5,000.00 of which is to be paid within thirty days from date hereof), I hereby acknowledge the said sum of \$10,000.00, when fully paid, to be in compromise and full payment of all claims on account of services and disbursements rendered or made or claimed to have been rendered or made on behalf of said Pacific Coast Borax Company, Borax Consolidated, Limited, or any affiliated company in connection with a proposed purchase from Suckow Borax Mines Consolidated, Inc., or from John K. Suckow of half interest in the West Half ( $W\frac{1}{2}$ ) of the Southeast Quarter ( $SE\frac{1}{4}$ ) of Section Fourteen (14), Township Eleven (11) North, Range Eight (8) West, S.B.M., in the County of Kern, State of California; and likewise in compromise and full payment of all claims, known or unknown, on any account whatsoever which I may have or claim to have against said Pacific Coast Borax Company, Borax Consolidated, Limited, or any affiliated company with respect to any transaction or transactions concerning said property or any other property or any other transaction whatsoever, it being the purpose and intention of this document to fully and completely release and discharge each and all of the said companies of and from any and

all liability or obligation to the undersigned on any account whatsoever.

In Witness Whereof, I have hereunto set my hand this 10th day of May, 1935.

/s/ VICTOR C. EMDEN.

State of New York,  
County of New York—ss.

On this 10th day of May, 1935, before me, Isaac L. Goldstein, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Victor C. Emden, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

(Seal)      /s/ ISAAC L. GOLDSTEIN,  
Notary Public in and for said County and State,  
New York.

My Commission expires March 30, 1937.

EXHIBIT No. 14

[Postal Telegraph]

August 1, 1930

Henry Blumenberg  
640 South Arden Blvd., Los Angeles, Calif.

Strongly recommend that you show McClintock your mine and other facilities on Saturday if possible in order to dispel any wrong impressions that

Sucow may have about same Stop This will give McClintock chance to set Suckow right before his meeting with Jenifer on Monday.

JOHN STAUFFER.

EXHIBIT No. 15

8-19-30

Telegram from Blumenberg to Stauffer

“Had long interview with McClintock told him S must be eliminated suggested he buys S out PCB furnishing the money making him president of company and that I would then go into any fair and just business arrangements Jenifer approves of this if it can be put through told him furthermore it was impossible to go over two hundred thousand This will divide the S camp probably in two factions and is really the only way peace can be obtained Am in constant touch with Jenifer several times each day and hope only for the best answer my home.”

(Copy)



EXHIBIT No. 16

[Johannes Grakhoff Letterhead]

[Stamp]: Received Sept. 25, 1930. Western Borax Co.

Hamburg, September 12th, 1930

Western Borax Company, Ltd.,  
566 Subway Terminal Bldg.,  
Los Angeles, California.

No. 276

Gentlemen:

Reverting to your favors of the 7th, 10th and 22nd July with regard to resale of crude material in Europe, I wish to inform you that on August 12th a conference was held in London between a committee of the Deutsche Borax Vereinigung and the representatives of Borax Consolidated Limited and Messrs. C. Christopherson & Co., London, with the object of fixing the conditions for a prolongation of the existing agreement for the next year. The main subject of this conference was the discussion on the resale of 3000 tons crude material in Europe through the D.B.V. Whereas in your aforementioned letters you always speak of 5000 tons, I beg before all to remind you that this figure represents the maximum quantity, the minimum being only 3000 tons. At the London Conference the General Manager of B.C.L., Mr. R. C. Baker, positively declined to negotiate with us about the resale of crude material for the reason that the D.B.V. represents refining interests only and has no right to sell crude material in Eu-

## Exhibit No. 16—(Continued)

rope. When pointing out to Mr. R. C. Baker that the D.B.V. had pledged to your company to draw a minimum of 3000 tons for resale and that you do not intend to give up this part of the contract, Mr. Baker replied that you would have to surrender the resale contract without any compensation and that he had no doubt of coming to an understanding with you quickly. Then the representatives of the D.B.V. made the alternative suggestion that we should be allowed to sell during 1931 to Poland and Russia the same quantity of crude material which we have sold during the year 1929, viz. 1000 tons. But also this suggestion has been declined by Mr. R. C. Baker in one of the recent letters of B.C.L.

Mr. R. C. Baker will sail for the U.S.A. at the end of September and intends to confer with your good-selves as well as with Mr. Stauffer and Dr. Suckow about the various existing difficulties. For your guidance in the negotiations with Mr. Baker or Mr. Zabriskie I beg to hand you enclosed the German copy as well as an English translation of the statement of the conditions fixed by the D.B.V. for an agreement for 1931, which have been submitted to B.C.L. by Messrs. Schering-Kahlbaum A. G., Berlin, on the 8th inst. and which contain the utmost concessions the members are prepared to make for a prolongation of the present agreement.

In perusing these conditions you will perhaps be surprised to learn that we have consented to the reduction of the resale agreement and in this connec-

## Exhibit No. 16—(Continued)

tion I wish to point out to you that the position of the D.B.V. is extremely difficult as in fact the interests of the D.B.V. have been restricted in former years to the refining business exclusively, so that we could only refer to our obligation to you to draw a quantity of at least 3000 tons for resale. Furthermore, the members of the D.B.V. are inclined rather to meet the wishes of B.C.L. in the crude material question than to take the risk of a new slump in the prices for the refined products. However, I hope that you will be more successful than we were in London by inducing Mr. R. C. Baker to change his mind with regard to the resale contract and to admit the resale of the quantity of crude material as specified in your contract with the D.B.V.

Kindly advice Mr. Dick or me by cable of the results of your negotiations. Meanwhile I am with kindest personal regards

Sincerely yours

/s/ JOHANNES GRASSHOFF.

2 encl. P.

P.S.—I wish to call your special attention to the fact that the aforementioned statement of conditions for an agreement for the year 1931 has been sent to B.C.L. with the particular proviso of your agreement to these conditions.

(Second Mail Copy)

[Stamp]: Received Sept. 26, 1930. Western Borax Co.

Exhibit No. 16—(Continued)

Statement of the Conditions for Agreement  
for the year 1931

1. The deliveries of refined material made by Borax Consolidated Limited (hereinafter referred to as B.C.L.) and the firms directly under their control to Germany for the year 1931 shall not exceed 1750 tons of Borax, 325 tons of Boric Acid apart from their participation in any increased consumption in Germany beyond the balance of sales allotted to the Deutsche Borax Vereinigung (hereinafter referred to as the D.B.V.) under Paragraph 6. Such undertaking must not be interpreted to affect any deliveries of refined material made by B.C.L. to the Deutsche Gold-und Silber-Scheideanstalt and/or Schott & Genossen.

2. The deliveries of refined material made by the other non-German party to Germany shall not exceed the figures of 6500 tons of Borax, 500 tons of Borax Acid with the proviso of the clauses of Paragraph 6.

3. The quantity of refined material, which the D.B.V. is allowed to export, shall not exceed the equivalent of a maximum of 2000 tons of crude material basis 44 per cent converted into Borax and/or Boric Acid.

4. The D.B.V. is entitled to supply the Aktiengesellschaft der Chemischen Werke (Dr. Sachs), Warschau, during the year 1931 with a quantity not exceeding 1000 tons of crude material basis 44% on the basis of the agreement made for the year 1930.



## Exhibit No. 16—(Continued)

In case the deliveries to the Aktiengesellschaft der Chemischen Werke should amount to less than 1000 tons, the D.B.V. is entitled to sell the quantity wanting to the Russische Handelsvertretung either direct or through B.C.L. at the prices and terms mutually agreed with B.C.L.

5. Apart from the right to sell crude material as per Paragraph 4 and eventual deliveries of crude material in case of any new uses developing in Germany according to Paragraph 7, the D.B.V. undertake not to make any sales or deliveries of crude material.

6. The D.B.V. is entitled to sell the equivalent of up to 15,000 tons of crude material basis 44 per cent in the form of refined material for home trade and export, such total quantity including that required to fill the contract referred to in Paragraph 4.

## Example:

	Tons
Estimated quantity of crude material 44% exported by the D.B.V. corresponding to .....	2,000
Estimated Kernite deliveries to Dr. Sachs and Russians corresponding to crude material 44% .....	1,000
Thus leaving for the D.B.V. inland sales equivalent of crude material 44% .....	12,000
	15,000

In the event of the demand in Germany increasing to such extent that after taking into account the deliveries made by the D.B.V. in Germany and for export and their deliveries of crude material to Dr. Sachs and to the Russians the sales of the D.B.V. exceed in all the quantity of 15,000 tons, then B.C.L.



Exhibit No. 16—(Continued)

and the other party on the one part shall participate to the extent of fifty per cent and the D.B.V. on the other part shall participate to the extent of fifty per cent in such increase beyond 15,000 tons.

B.C.L. and the other party concede to the D.B.V. at least 60 per cent of the consumption of refined material in Germany.

The demand for a Minimum Quota of 60 per cent is based on the following calculation:

	Crude material 44%
Maximum Quota of B.C.L.:	
1750 tons Borax x 0,833=1458 tons crude material 44% equivalent)	
325 tons Boric Acide x 1,283= 417 tons crude material 44% (equivalent) .....	= 1875 tons
Maximum Quota of the other party in 1930:	
6500 tons Borax x 0,833=5415 tons crude material 44% (equivalent)	
500 tons Borix Acid x 1,283=641 tons crude material 44% (equivalent) .....	= 6056 tons
Quota of the D.B.V. during 1930 for home trade:	=12000 tons
<hr/>	
Total Quantity in Germany about:	20000 tons

The quota of at least 60 per cent of the refined material trade allotted to the D.B.V. has been derived from the aforementioned figures. This means that in the event of the demand in Germany decreasing below 20,000 tons the maximum quota allotted to B.C.L. and the other party has to be reduced correspondingly.

7. B.C.L. is entitled to sell crude material to Germany to Deutsche Gold- und Silberscheideanstalt, Henkel & Co., Schott & Genossen, Glaswerke

## Exhibit No. 16—(Continued)

Ruhr, Glaswerke Brockwitz, provided those deliveries are strictly confined to material intended for buyers' own consumption and not for resale as Borax and/or Boric Acid.

Apart from the above right to sell B.C.L. undertakes not to make any sale of crude material to Germany.

Should the requirements of the Glaswerke Ruhr and the Glaswerke Brockwitz exceed the quantity drawn during 1929, totaling 357 tons of 44 per cent crude material, the quantity in excess of aforementioned 357 tons shall be considered in reduction of the maximum quantities of refined material specified in Paragraph 1.

In the event of any new uses for crude material developing in Germany during the currency of this Agreement then before any sale is effected the parties to such Agreement shall meet together and discuss the terms and conditions of sale and if no mutual understanding is arrived at in regard to such sales then each party shall be entitled to terminate this Agreement at thirty days' notice. Notwithstanding, small quantities of crude material may be supplied for making experiments.

8. B.C.L. undertake not to deliver crude material to any new factories that may be started in other countries in Europe to manufacture Borax and/or Boric Acid during the period of this Agreement.

9. The firms participating in this agreement as also all those companies controlled by them under-

Exhibit No. 16—(Continued)

take to adhere to the selling prices and conditions for refined material fixed by them.

10. The prices and conditions for refined material for Germany shall in principle conform to the world's market prices; a request of the D.B.V. to alter the selling prices and/or terms in Germany shall not be rejected by the other parties without convincing motives.

11. In the event of any alteration in the prices of refined material in countries bordering on the German frontier whenever such alteration in prices plus the duty levied in Germany would bring such prices below the figures ruling in Germany the D.B.V. shall be consulted before such change is decided upon and their agreement obtained which shall not be unreasonably withheld.

12. For the rest of the world selling prices and conditions shall be fixed by B.C.L.

13. All alterations in prices must be notified by B.C.L. to Mr. Johannes Grasshoff, Hamburg, by telegram twenty-four hours before such come into effect. Mr. Johannes Grasshoff is bound immediately on receipt of said telegram to communicate the new prices likewise by telegram to all the members of the D.B.V.

14. In the event of any firm desiring to carry through any business in exceptional instances at special prices below the agreed selling conditions then the previous consent of all the contracting parties must first be obtained.

15. In the event of any new serious competition

## Exhibit No. 16—(Continued)

arising in Germany then a way shall be mutually sought without delay which offers prospects to fight such new competition involving the smallest sacrifice whilst securing the most effective results.

In the event during the currency of this Agreement of the German market being disturbed seriously by the existing or any new outsiders then the contracting parties are pledged upon receipt of notice from another party to take proper measures against the competition. In the event of this demand not or not sufficiently being complied with then each party is entitled to terminate this Agreement at any time irrespective of the date of expiration at a fortnight's notice, counting from the date of such notice.

18. B.C.L. undertake not to adopt measures to fight the outsiders outside Germany which would lead to such outside material being forced on to the German market.

17. This Agreement covers up to the thirty-first day of December One thousand nine hundred and thirty-one.

## Alternative Suggestion to Paragraph 4

In the event of the stipulations fixed in Paragraph 4 not being approved, the D.B.V. is ready to renounce the claim of selling the quantity of crude material up to 1000 tons not drawn by Dr. Sachs, Warsaw, to Russia, provided the other contracting parties are willing to reduce their quotas in the refined material trade by 1500 tons Borax in all.

In such case the minimum quota of the D.B.V. of 60 per cent of the German consumption specified in Paragraph 6 is to be increased by 1500 tons Borax corresponding to 1250 tons crude material 44 per cent to at least 13,250 tons crude material 44 per cent equal to a quota of  $66\frac{1}{3}$  per cent, and the maximum collective total quantities of B.C.L. and the other party are to be reduced correspondingly.

P.

EXHIBIT No. 17

[Johannes Grasshoff Letterhead]

[Stamp]: Received Jan. 19, 1931, Western Borax Co.

Hamburg, January 6th, 1931

Western Borax Company, Ltd.,  
566 Subway Terminal Bldg.,  
Los Angeles, California.

No. 336

Gentlemen:

I want to confirm your two favors Nos. 52 and 56 with reference to the agreement for the current year, and wish to thank you for the report about your conference with Messrs. Baker and Zabriskie in San Francisco. However, you state in this letter that Mr. Baker last year agreed to the resale of crude ore in Germany through the German Refiners, which is not the case according to my records as Mr. Baker has at all times strongly objected to the resale of ore through the Germans. For the negotiations with the English which were to take place in Europe,



after you agreed with Mr. Baker to let matters rest, I cabled Mr. Dick to communicate with you, and to ask for your approval to release the Refiners from the obligation to take any resale quantities during the new agreement with the English. Mr. Dick informed me that you waived the resale clause for 1931 provided that Mr. Baker would agree to the conditions of my letter No. 276, but it must be understood that this waiver does not affect the contract as a whole.

At the meeting which took place on December 17th and 18th, 1930, in Berlin Mr. Gerstley of Borax Consolidated Limited reported about the negotiations of Mr. Baker in America, which have, as far as the Pacific Alkali Company is concerned, not shown any positive results so far, as Mr. Mudd who owns this company is visiting Europe and Egypt. After his return to America the negotiations will be taken up again. Furthermore, it was stated that the Suckow Borax Mines had difficulties with "Gembo", the outsider in Holland, about analysis-differences which amount to about 3%, and there is a possibility that "Gembo" herself will take over the mining of the ore of the Suckow-Mine. Mr. Baker has suggested to Dr. Suckow to close his mine in which case B.C.L. would fulfill the contracts signed by Dr. Suchow. However, there will be hardly a chance that an agreement can be come to before the end of March, although a gentleman has been entrusted with the continuation of the negotiations.

Considering this it was suggested that a pro-

visional agreement should be made to expire on April 30th, 1931. The total of the sales in Germany shall be divided among the three parties of the agreement as follows:

Deutsche Borax-Vereinigung	56%
C. Christopherson & Co.	35%
Borax Consolidated Limited	9%

As already advised by my cable of December 19th, 1930, the quota of 56% allotted to the D.B.V. means a small increase over that of last year. The export-quota of refined material of the D.B.V. remains unchanged, and it has been attained to obtain a prolongation of the crude-material contract with our Polish friends. The latter have already informed me that their requirements for the current year amounted to about 50 tons Kernite monthly. On the other hand we pledged to refrain from further resales of crude ore. Considering the heavy competition of the outsiders and the prevailing market situation the above agreement must be called favorable.

On the 19th (Dec. 1930) of last month I cabled you the results of the agreement as follows:

“Made provisional agreement with English and Trona till April thirtieth our share of total German trade fifty-six percent means small increase over 1930 Stop Export quota and Poland contract unchanged but waived further resales Stop Shall give final agreement unless receiving your objection till Monday think agreement favorable considering outsider competition and market situation Stop English

expect settling Suckow and Alkali matter till April.”

Your reply of the 19th December reads as follows:

“Cable received your arrangements with Trona and BCL agreeable.”

I beg to thank you for your consent and your assistance in this matter, and informed the Refiners accordingly.

With kindest personal regards, I am,

Sincerely yours,

/s/ JOHANNES GRASSHOFF.

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[Title of District Court and Cause.]

AFFIDAVIT OF FRANK BUREN IN OPPOSITION TO MOTIONS TO DISMISS.

United States of America,  
Southern District of California,  
County of Los Angeles,—ss.

Frank Buren, being first duly sworn, deposes and says:

That he is the Frank Buren referred to on pages 35, 37 and 38 of the brief on behalf of Defendants Borax Consolidated, Ltd., and others and filed herein in support of the said motions to dismiss;

That between the years 1932 and 1940, affiant was at various times Secretary of said Suckow Borax Mines Consolidated, Inc., one of the plaintiffs herein, and at various times during said period acted as attorney for said Suckow Company;

That at the time affiant made the statements or allegations referred to in said brief, he had no

knowledge or information of any kind whatsoever of the existence of the 1929 conspiracy denominated in the complaint as "General Conspiracy," and that none of the statements made by him and referred to in said brief had reference to said '29 conspiracy. That all of said statements referred to the particular activities of Defendant Borax Consolidated, Ltd., and its subordinates and affiliates and involved in said suit referred to and numbered C-107M and the other suits and litigation in which said Defendant Borax Consolidated, Ltd., had involved Dr. Suckow or the said Suckow Company, and all of such statements of affiant as to monopoly or conspiracy referred solely and only to said conspiracies involving said suits or actions. Likewise the reference made by affiant in the hearings before the United States Senate Committee, and referred to on pages 37 and 38 of said brief of Defendant Borax Consolidated, Ltd., had reference only to the proceedings and activities of defendants and involved in said action No. C-107-M and the said other suits in which said Borax Consolidated, Ltd., had involved Dr. Suckow or the Suckow Company, and the testimony given by affiant at such hearings, referred to on page 37 of said brief, pertained to the various and sundry suits which were or had been prosecuted against Dr. Suckow or said Suckow Company by said Defendant Borax Consolidated, Ltd., or its affiliates or associates;

That at no time during said period within which affiant was connected with said Suckow Company did Dr. John Suckow ever mention or refer to the



said General Conspiracy of 1929, and affiant is certain that Dr. Suckow had no knowledge of the existence of said '29 conspiracy; that said Dr. Suckow at various times discussed with affiant the possibility and probability of a monopoly existing in the borax industry and maintained by Defendant Borax Consolidated, Ltd., and its associates, but affiant knows of his own knowledge from statements made to him by said Dr. Suckow that the latter had no proof of the existence of such monopoly or conspiracy as charged and his thoughts in connection therewith were mere suspicions.

/s/ FRANK BUREN.

Subscribed and sworn to before me this 2nd day of April, 1948.

(Seal)

/s/ E. FARRAR,

Notary Public in and for the County of Los Angeles, State of California.

My Commission expires August 21, 1951.

[Endorsed]: Filed April 7, 1948.



DEFENDANT'S EXHIBIT "A"

In the District Court of the United States for  
the Northern District of California,  
Southern Division

No. 27646-R

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation; MOJAVE BORAX COM-  
PANY, LTD., a corporation; PAUL O. TOBE-  
LER, Executor of the Last Will and Testament  
of JOHN K. SUCKOW, Deceased, and RUTH  
E. SUCKOW,

Plaintiffs,

vs.

BORAX CONSOLIDATED, LTD., a corporation,  
et al.,

Defendants.

AFFIDAVIT OF C. N. OLSON

State of California,  
County of Los Angeles—ss.

C. N. Olson, being first duly sworn, deposes and  
says:

That he was at all times hereinafter mentioned  
an official shorthand reporter for the Honorable  
Earl E. Moss, Referee in Bankruptcy, in the Dis-  
trict Court of the United States for the Southern  
District of California, Central Division.

That he was the official reporter at the hearing  
held on February 6, 27 and 28, 1934; March 1, 3, 14,  
21, 23 and 28, 1934; and April 4 and 16, 1934, be-  
fore said Honorable Earl E. Moss, Referee in

## Defendant's Exhibit "A"—(Continued)

Bankruptcy, in the Matter of Suckow Borax Mines Consolidated, Inc., a corporation, Bankrupt, bearing No. 16938-H on the records of said court; that said hearing was held on the petition of said Suckow Borax Mines Consolidated, Inc., a corporation, for an order to show cause why the Trustee in Bankruptcy should not execute and deliver a lease of the entire alleged bankrupt estate; that the said Suckow Borax Mines Consolidated, Inc., the alleged bankrupt, was represented at said hearing by its attorneys, William H. Neblett, Esq., E. H. Mitchell, Esq. and Arnold A. Odum, Esq., of the firm of McAdoo & Neblett, and Frank Buren, Esq.; that Pacific Coast Borax Company, a corporation, and Borax Consolidated, Ltd., a corporation, were represented at said hearing by their attorney, A. W. Ashburn, Esq., of the firm of Newlin & Ashburn; that Hubert F. Laugharn, Esq., Trustee in Bankruptcy in said proceeding, was represented at said hearing by his attorney, Walter H. Moses, Esq.

That the following is a full, true and correct transcript of certain statements made and proceedings had at said hearing:

"Mr. Neblett: There is no evidence on that score, and besides I say counsel,—I will say the Borax Consolidated has made a violent attempt to put Doctor Suckow out of business and now they present the remarkable spectacle of trying to put him entirely out of the Court's mind." (Tr. page 11, lines 21-25.)

"The Referee: If I read the pleadings correctly, there are some conclusions in the pleadings

Defendant's Exhibit "A"—(Continued)

which are disputed and there are some facts plead like the question of monopoly that of course is entirely immaterial.

"Mr. Neblett: We concede that, your Honor. That got into the position——

"The Referee: But the material allegations of fact are almost undenied, isn't that correct? You raise a great many matters as affirmative defense.

"Mr. Ashburn: Yes, we did do this, though, it occurs to me offhand, we denied for lack of information the making of the Small offer or the bona fides of the offer. We raised the issue as to who this fellow Small is and what his financial ability is and who are his associates. Now, the remark just made by Mr. Neblett leads me to inquire this because it looks as if it was intended to somewhat simplify the issues. Do I correctly infer from that that you concede that the allegations of paragraph 11 of the petition are immaterial?

"Mr. Neblett: I will have to look at paragraph 11.

"Mr. Ashburn: Yes.

"The Referee: It would seem to me that except the allegation that the bankrupt is a cotenant of the Borax Consolidated which is alleged in another place, the allegation of the filing of the suit and the filing of the bankruptcy petition, that all the rest of the allegations of that paragraph are immaterial.

"Mr. Moses: There is also an allegation as to the price of ore, which may or may not be material.

"The Referee: I doubt its materiality.

## Defendant's Exhibit "A"—(Continued)

"Mr. Neblett: I have no objection—I mean I take no exception to the Court's statement or ruling. I will answer the question of Mr. Ashburn in that manner.

"Mr. Ashburn: All right. I do not want to be misunderstood. I am not here to block a canvass of these issues. They have been bandied around this town for months and months, and if the bankrupt has evidence to prove them as far as I am concerned, he can go ahead and prove them, but if they concede these allegations are immaterial before this proceeding starts, then I am ready to submit to this Court and trustee an offer on behalf of my client which is far more advantageous to this bankrupt estate than anything before this Court now but I am not going to do so while we are faced with these charges.

"Mr. Neblett: I am not saying those things are not true—I do not want to be misunderstood either. I claim they are true and I claim those allegations will be proved in the proper proceedings at the proper time, but they are not material in accordance with your Honor's ruling in the present proceeding. That is as far as I can go. I take no exception to your Honor's ruling because it is limited as I understand it and your Honor is not extending it beyond the present pending proceedings.

"The Referee: Correct.

"Mr. Ashburn: Does your Honor understand Mr. Neblett's statement to be a concession these allegations are not material to this proceeding?

"The Referee: As I understand he takes no ex-



Defendant's Exhibit "A"—(Continued)

ception to the Court's ruling they are immaterial, without the right to appeal or review.

"Mr. Ashburn: I understood him to stipulate they were immaterial.

"Mr. Neblett: If you understood that I withdraw it and stand upon the proposition as stated by the Court.

"Mr. Ashburn: All right.

"Mr. Moses: It seems to me they are either material or immaterial, but that is strictly a matter of law. I do not see why this estate should be subjected any more than is necessary to clamorings of one kind or another on the part of its bankrupt or officers, attorneys, representatives or employees or what have yous for the benefit of the public press and anybody else who is silly enough to pay attention to a lot of unverified statements.

"The Referee: If you can find someone to stop these things——

"Mr. Moses: I think the time has come in this proceeding to ignore conversation as far as court proceedings are concerned. Everybody has his remedy I am sure for every wrong that has been perpetrated against him. That is a theory of our law and I believe is true in practice. Whether it results that way or not is sometimes a matter of opinion, but I do not see why this estate cannot be administered like an estate in bankruptcy and not a theatrical proposition for the benefit of every Tom, Dick and Harry that reads the newspapers, and I feel personally that the allegations of this particular



## Defendant's Exhibit "A"—(Continued)

petition which are wholly immaterial as to whether or not the trustee should have an operation of this property could only have had one purpose in being put in this petition and that was the publicity which followed the filing of this petition, and I am referring to the articles that appeared in the newspapers on the Sunday after the Saturday the petition was filed, and the matter would have been wholly uninteresting to the newspapers without the allegations of paragraph 11." (Tr. page 32, line 25, to page 36, line 15.)

"Mr. Neblett: Do I understand you are referring to monopoly now, is that your idea?

"Mr. Moses: I have made the statement and I think it is perfectly clear to anybody who wants to understand it.

"Mr. Neblett: I think it is perfectly clear and it means you are defending it.

"Mr. Moses: You are at perfect liberty to put any construction on it you want.

"Mr. Neblett: That is my construction.

"Mr. Moses: And I feel as attorney for the trustee in this estate it is not asking any more than the estate is entitled to to have the attorney for the bankrupt state, as he has admitted, these matters are not germane to the inquiry here today and therefore we can proceed to determine whether or not this property may or may not be operated in some manner which will net a return to this estate.

"Mr. Neblett: I thought that the Court had ruled upon it and I thought I had stated I would

## Defendant's Exhibit "A"—(Continued)

take no exception to the Court's ruling, and if I am mistaken in that I will restate it, and I expressly state I think the allegations are true and feel they can be proved at the proper time." (Tr. page 37, line 9 to page 38, line 4.)

"Mr. Neblett: May I make a remark to the Court at this moment?

"The Referee: Yes.

"Mr. Neblett: This remark is provoked by a statement that counsel for Borax Consolidated made just prior to the adjournment. That remark was that Borax Consolidated, Ltd., or Pacific Coast Borax Company or themselves jointly would have an offer to make to this Court. When that offer is made, if it is made, your Honor, I shall ask the Court to be relieved from the lack of objection to the ruling of the Court on the immateriality of some of the allegations in paragraph 11 of the petition. My reason for that is this, in the event such an offer is made, and I am informed by my associate who drew this petition, and what I am going to say now is what he told me,—that the purpose of including that in the petition in the first place, that is it was understood tacitly that maybe some such offer might come in and if any such offer is made by Mr. Ashburn's client then I shall ask to be relieved for the reason we think and feel we can prove that that offer will be an attempt to obtain a lease in the names of those parties or in some person representing them for the purpose of continuing the strangulation of this business of the

## Defendant's Exhibit "A"—(Continued)

Suckow Borax Mines now in the hands of the trustee and for that reason I shall ask the Court when the offer comes in to be relieved of it." (Tr. page 40, line 6 to page 41, line 5.)

"Mr. Neblett: Your Honor please, now wait a minute. I object on the ground the Pacific Coast Borax Company and Borax Consolidated, Ltd., are now trying to prove by this witness he is a member of their monopoly and thereby making the whole thing void if ever granted. If this witness should agree to fix prices with the Pacific Coast Borax Company on the witness stand or any way else, it would furnish a basis not only to declare the lease void but furnish a basis for criminal action against all of them. That is the theory of the thing, and it is perfectly apparent. It may be the Pacific Coast Borax Company and Borax Consolidated have so long enjoyed a monopoly they have forgotten the laws that are against them. That is the position I take on the thing.

"The Referee: Let me ask the witness a question.

"Q. I take it, and it is practically self-evident, if you accepted a lease containing terms approved by the Court you would comply with those terms?

A. Yes.

"The Referee: Now then, when you get to the point of preparing and presenting the lease I will be very glad if that point is reached, I will be very glad, Mr. Ashburn, to see any proposed draft you may care to offer as to the terms of the proposed lease and then when those terms have been agreed

Defendant's Exhibit "A"—(Continued)

upon you may ask this or any other party to the lease any questions that you desire concerning those terms.

"Mr. Ashburn: I take it that is a ruling on the objection?

"The Referee: It is.

"Mr. Ashburn: We except. Now I want to say in response to the voluntary statement of counsel that I have invited him before and I invite him again to substitute for his unsustained charges of monopoly evidence of the charges if he has evidence, and let him prove it and produce something other than mere uncorroperated statements.

"Mr. Neblett: I can prove it as a defense of Borax Consolidated against the Suckow Borax Mines, if that ever comes to trial, if you can ever beat Mr. Moses down and get it to trial I can prove it beyond any doubt." (Tr. page 142, line 22 to page 144, line 8.)

"Mr. Neblett: If the Court please, we have gone over the offer made by the Pacific Coast Borax Company and we will say in the main that we will not resist the offer and will upon certain minor considerations accept it—or qualifications, I should say—but I would like to ask Mr. Jenifer a few questions because I have been so surprised with this offer of \$5.00 a ton that maybe that is not all the ore is worth, and if the property is worth any more than that I think the trustee should get the benefit of it.



## Defendant's Exhibit "A"—(Continued)

"Mr. Ashburn: We object to any examination on that ground. It might be worth \$40 a ton and we would not have to offer forty." (Tr. page 168, lines 7 to 18.)

"Mr. Neblett: In order to make myself clear I will present what I propose to prove and your Honor has already indicated the Court's ruling and the Court will then make its ruling on the matter.

"I offer to prove by this witness that the ore is worth less than \$5.00 a ton in the ground and that the offer is made not for the purpose of operating the mine so as to obtain moneys to run the properties and keep the properties in condition but for the purpose of controlling the production of borax in that field. That the offer itself, while uncertain in some particulars, I assume those uncertainties may be cleared up in the Court's order, and in the acceptance which I will state to your Honor made by the petitioner, the condition of the offer is it must be accepted by the petitioner and that is a reasonable condition of course because of the pendency of the bankruptcy proceedings at this time which, if it were reversed and the bankrupt did not consent might cause complications as far as the lessee is concerned, and I think the petitioner's consent is vital on that account. I will make the offer along the line suggested, that is that we offer to prove by this witness that that lease proposed by the Pacific Coast Borax Company is made not for the purpose of assisting the trustee and not for the



Defendant's Exhibit "A"—(Continued)

purpose of obtaining money for the estate but for the purpose of controlling the production of borax in Kramer Field in Kern County by the proposed lessee, its subsidiaries and owners. That is the limit of my offer." (Tr. page 172, line 6 to page 173, line 8.)

"Mr. Buren: As to the question of objection, the document I filed this morning shows the reason we are objecting to the lease of the Pacific Coast Borax Company. If it were someone else other than them we might not object to it. We do not believe, and I have no hesitancy in so stating, we do not believe they are acting in good faith in making this offer, but it is made merely for the purpose of keeping someone else out of the market." (Tr. page 258, line 25 to page 259, line 6.)

That said statements were made in the presence of affiant and taken down by him in shorthand and were thereafter transcribed and reduced to typewriting under his supervision and direction.

/s/ C. N. OLSON.

Subscribed and sworn to before me this 29th day of March, 1948.

(Seal) /s/ W. J. MILOTZ,

Notary Public in and for said  
County and State.

Defendant's Exhibit "A"—(Continued)

In the District Court of the United States,  
Southern District of California,  
Central Division

Before the Honorable Earl E. Moss, Referee in  
Bankruptcy.

No. 16938-H

In the Matter of SUCKOW BORAX MINES  
CONSOLIDATED, INC., a corporation,  
Bankrupt.

A Petition for Order to Show Cause Why the  
Trustee in Bankruptcy Should Not Execute and  
Deliver a Lease of the Entire Alleged Bank-  
rupt Estate.

Comes now Suckow Borax Mines Consolidated,  
Inc., a corporation, and petitions this court that  
an order directed to Hubert F. Laugharn, trustee  
of the above entitled bankrupt estate, be issued by  
this court to show cause why he should not execute  
and deliver a lease of the entire estate of the al-  
leged bankrupt, and, as grounds for such order,  
represents to the court as follows:

\* \* \* \*

X.

That Borax Consolidated, Ltd., a corporation or-  
ganized and existing under and by virtue of the  
laws of the Kingdom of Great Britain and quali-  
fied to do business in the State of California, was  
and is co-tenant with your petitioner in the owner-  
ship of the real property hereinabove particularly  
described.

Defendant's Exhibit "A"—(Continued)

XI.

That your petitioner is informed and believes, and on such information and belief alleges, that Borax Consolidated, Ltd., maintains and controls a world-wide monopoly in the mining, refining, distribution and sale of borax, a household article of general use;

That the total requirements of the world market for refined borax is 200,000 tons a year;

That the product so mined and sold in the enjoyment of its great monopoly by Borax Consolidated, Ltd., the English corporation, all comes from the Kramer district in Kern County, California;

That Suckow Borax Mines Consolidated, Inc., the alleged bankrupt, is a co-tenant with Borax Consolidated, Ltd., on 240 acres in Kern County containing the rich deposit of borax ore;

That Suckow Borax Mines Consolidated, Inc., was mining this co-tenancy property and refining the product, thus offering the only competition in world trade in refined borax after Borax Consolidated, Ltd., had gradually acquired the properties of all competitors;

That in 1930 a suit was commenced entitled "Borax Consolidated, Ltd., a corporation, v. Suckow Borax Mines Consolidated, Inc., John K. Suckow, et al." the purpose of which was to establish a lien upon the Suckow Borax Mines Consolidated's undivided one-half of the borax bearing properties for ore alleged to have been taken out by the Suckow interests and not accounted for to Borax Consolidated, all to the interest of the monopoly under

## Defendant's Exhibit "A"—(Continued)

control of Borax Consolidated, the English corporation;

That in the meantime and on June 30, 1931, the petition in involuntary bankruptcy was filed against Suckow Borax Mines Consolidated, Inc., which is now on appeal.

That Borax Consolidated initiated all this litigation including the actions named, all and solely for the purpose of maintaining its world-wide monopoly as an English corporation and oppressing, harrassing and suppressing its sole competitor that he might be removed from the field of world competition;

That since this litigation was started, the price of borax has risen steadily and is now quoted at Thirty Dollars (\$30) per ton f.o.b. Los Angeles;

That Borax Consolidated, Ltd., has heretofore and is now harrassing and interfering with your petitioner in his management and operation of the borax properties for the purpose of maintaining the British monopoly of an American product; has threatened to and has attempted to intimidate your petitioner's customers and the purchasers of the product from the borax deposits held in co-tenancy; has demanded from time to time that your petitioner disclose the names of his customers and that your petitioner join with Borax Consolidated in the maintenance of a world-wide monopoly by determining the output, fixing the price and regulating the marketing of the products of the Kern County

Defendant's Exhibit "A"—(Continued)

borax deposits, all of which your petitioner has declined to do.

Dated January 27, 1934.

Respectfully submitted,

WM. H. NEBLETT,  
ARNOLD A. ODLUM,  
HIRAM E. CASEY,  
FRANK BUREN,

By ARNOLD A. ODLUM,  
Attorneys for Suckow Borax  
Mines Consolidated, Inc.

SUCKOW BORAX MINES  
CONSOLIDATED, INC.,

By JOHN K. SUCKOW,  
President.

Attest:

FRANK BUREN,  
Secretary.

State of California,  
County of Los Angeles—ss.

John H. Suckow, being by me first duly sworn, deposes and says: That he is the president of Suckow Borax Mines Consolidated, Inc., petitioner in the above-entitled action; that he has read the foregoing Petition and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein



Defendant's Exhibit "A"—(Continued)

stated upon his information or belief, and as to those matters that he believes it to be true.

JOHN K. SUCKOW.

Subscribed and sworn to before me this 27th day of January, 1934.

(Seal)

VERA L. McLAUGHLIN,

Notary Public in and for said  
county and state.

In the District Court of the United States  
Southern District of California,  
Central Division

Before the Honorable Earl E. Moss, Referee in  
Bankruptcy.

No. 16938-H

In the Matter of SUCKOW BORAX MINES  
CONSOLIDATED, INC., a corporation, Bank-  
rupt.

An Amendment to a Petition for Order to Show  
Cause Why the Trustee in Bankruptcy Should  
Not Execute and Deliver a Lease of the Entire  
Alleged Bankrupt Estate.

Comes now Suckow Borax Mines Consolidated,  
Inc., a corporation, and submits and files this its  
amendment to a petition for order to show cause  
why the trustee in bankruptcy should not execute  
and deliver a lease of the entire alleged bankrupt  
estate heretofore filed herein, and states and al-  
leges as follows:

I.

That portion of Paragraph XI, beginning in sub-

Defendant's Exhibit "A"—(Continued)

paragraph on line 22 of page 4 of said petition, be amended to read as follows:

That in 1930, a suit was commenced entitled "Borax Consolidated, Ltd., a corporation, v. Suckow Borax Mines Consolidated, Inc., John K. Suckow, et al.," which was an action for an accounting, but after the petitioner herein was adjudicated a bankrupt, an amendment to the petition in the aforementioned cause was filed, the avowed purpose of which was to establish a lien upon the Suckow Borax Mines Consolidated's undivided one-half of the borax bearing properties for ore alleged to have been taken out by the Suckow interests and not accounted for to Borax Consolidated, all to the interest of the monopoly under control of Borax Consolidated, the English corporation.

\* \* \* \*

Dated February 12, 1934.

WM. H. NEBLETT,  
ARNOLD A. ODLUM,  
HIRAM E. CASEY,  
FRANK BUREN,

By ARNOLD A. ODLUM,

Attorneys for Suckow Borax  
Mines Consolidated, Inc.

SUCKOW BORAX MINES  
CONSOLIDATED, INC.,

By JOHN K. SUCKOW,  
President.

Attest:

FRANK BUREN,  
Secretary.

Defendant's Exhibit "A"—(Continued)

State of California,  
County of Los Angeles—ss.

John H. Suckow, being by me first duly sworn, deposes and says: That he is the president of Suckow Borax Mines Consolidated, Inc., petitioner in the above-entitled action; that he has read the foregoing Amendment to Petition and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

JOHN K. SUCKOW.

Subscribed and sworn to before me this 13th day of February, 1934.

(Seal)                      VERA L. McLAUGHLIN,  
Notary Public in and for said  
County and State.

District Court of the United States, Southern  
District of California, Central Division

United States of America,  
Southern District of California—ss:

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing is a full, true, and correct copy of a Portion of Petition, and a portion of an amendment to Petition for order to Show Cause, etc., attached to Certificate on Review, filed in my office July 10th, 1934, in the Matter of Suckow Borax Mines Consolidated, Inc., Bank-

Defendant's Exhibit "A"—(Continued)

ruptcy case No. 16938-H, as the same appears from the original record remaining in my office.

Witness my hand and the seal of said Court, this 29th day of March, A.D. 1948.

(Seal) EDMUND L. SMITH,  
Clerk,

By /s/ REX LAWSON,  
Deputy Clerk.

[Endorsed]: Filed 4/3/48.

[William H. Neblett Letterhead]

January 30, 1934

Hon. Harry Hollzer,  
Federal Bldg.,  
Los Angeles, Calif.  
My dear Judge Hollzer:

In re Borax Consolidated, Ltd. v. John K.  
Suckow—In Equity C-107-H.

It must now be apparent to the court that this action and the other litigation fostered and prosecuted by the plaintiff is an attempt to maintain the monopoly which Borax Consolidated has in the borax industry. The destruction of the one competitor of the plaintiff is the only objective of this action.

True, the plaintiff through its counsel and directing genius, as any good strategist would do, has carefully screened from the court its real intentions, hoping to take, by this ruse, the Suckow

## Defendant's Exhibit "A"—(Continued)

ground and hold it fortified by the judgment of this court. Proof of plaintiff's purposes, if theretofore lacking, was established by its letter to the court of January 15, in which the defendant Suckow's attempt to halt the uninterrupted successes of the plaintiff, was actually resented. The confession of plaintiff's intentions is found in the last paragraph of that letter, quoted again in the memorandum of January 25, where it is claimed that there should be no delay in signing the judgment because Dr. Suckow has made transfers of his individual property beyond the reach of the proposed judgment except by a suit to set aside the transfers.

The unlawful and monopolistic plan of the plaintiff appears in Plaintiff's Exhibit 8, the letter of October 4, 1927, where it is said:

"As the market for this ore is limited, we insist that each owner is entitled to participate in the marketing of every part of the ore extracted and profits divided on basis of ownership."

Further upholding this view of a monopoly is the failure of the plaintiff to take advantage of the order of the court fixing \$21.89 as the price to each party of the ore at the mouth of the shaft. The plaintiff has not taken advantage of this order made at its request. Rather, it has preferred to use the court as an unwitting instrument of oppression by obtaining a judgment with which the plaintiff plans to eliminate from the borax field its one competitor, Suckow.

With unequalled bravado the plaintiff declaims to



## Defendant's Exhibit "A"—(Continued)

the court in paragraph IX of its sworn complaint that it is engaged in interstate and international commerce, and that the defendant is guilty of unfair competition because its operations tend to interfere with its monopoly.

The plaintiff is a monopoly of the worst sort. It confesses in its complaint that the great majority of its business is interstate and international commerce. Its acts violate the provisions of Sections 1 to 7 of the Sherman Anti-Trust Law, USCA Title 15, page 4 et seq. The plaintiff should be condemned for the ingenious scheme it is using of invoking the aid of the court to frustrate the laws of the nation and to sustain its unlawful monopoly.

This is a suit in equity. The court is asked to give a judgment in violation of the statutes of the United States.

The principle that equity will not give any relief to a party, or suffer him to make any defense that violates the statutes or laws of the Federal or state governments has been upheld by every court in the land. The plaintiff has no standing in the state courts. (*Morey v. Paladini*, 187 Cal. 727). That case and many other California cases hold that, once it appears that a plaintiff has been guilty of unconscionable conduct or has done or participated in any acts which contravene the laws of public policy of a state or the nation, he will be denied any relief. The case cited also holds, in accord with the unconflicting and ancient line of authority, that such question may be raised at any time, even upon ap-

## Defendant's Exhibit "A"—(Continued)

peal, and that the court will act of its own motion and dismiss the action if it discovers the fact of unconscionable conduct or violation of law.

Defendants are informed that so complete is the monopoly in the plaintiff that the borax industry has not adopted any code of fair competition under the National Recovery Act. It is obvious that, with its sole competitors, the defendants, being temporarily out of business and the plaintiff supreme in its monopoly, the plaintiff would not consider a code necessary for the conduct of the monopoly.

The court should not only refuse to sign the findings, but should dismiss the action.

Yours truly.

WM. H. NEBLETT.

WHN:M

A copy of this letter has been sent to Newlin & Ashburn.

## EXHIBIT "A"

March 12, 1930

Mr. William E. Colby,  
Mills Building  
San Francisco, Calif.

My dear Mr. Colby:

Your letter of March 8th and the enclosed opinion relating to the matter of Borax Consolidated, Limited, vs. Suckow were received by me on Monday morning, and I have spent a large part

## Defendant's Exhibit "A"—(Continued)

of my time since then studying the matter. I very much appreciate the suggestions which you made and the very exhaustive and able opinion which you submitted. I have redrafted the bill so as to incorporate to the extent of my ability and in most respects the suggestions which you made, and will forward the redraft of the bill to you either in this letter or under separate cover.

I have discussed with our client the matter of a partition suit to date they have rejected the suggestion because of the improbability of their being able to enforce any bid which Suckow, or his representative, might make. In other words, he does not have to put up a bond and the only remedy would be an action at law to enforce the bid or a re-sale with an action for the difference; if meantime the property had been bought in at a re-sale there would be very little, if anything, of a tangible nature out of which to collect the judgment.

Our client is also advised of the possibility that the accounting action may result in an adverse judgment, but notwithstanding this fact, has concluded to pursue the matter at this time. Mr. Moreau, the company bookkeeper, made a transcript some months ago of most of Dr. Suckow's books and while the information thus obtained is wholly unsatisfactory, he and Mr. Dudley have so analyzed it as to indicate a very substantial profit on operations prior to the Gembo contract. Suckow, as you know, presented a further but partial statement of account during the taking of his deposition.

## Defendant's Exhibit "A"—(Continued)

Pursuant to the stipulation there made, Mr. Dudley has obtained or is obtaining, such further information as the Suckow books disclosed. Of course, the burden is on him to account and if his books are inadequate, all matters of doubt would be resolved against him as they were in the other suit. Moreover, it is extremely unlikely that the accounting suit would result in a money judgment against the Borax Company. If it should appear that the operations had been conducted at a loss (after taking into consideration the capital expenditures, etc.), the best that Suckow could expect would be a judgment to the effect that he have a lien upon the Borax Company's half of the property to the extent of half of the loss, and that upon satisfaction of the said lien, half of all of the improvements would belong to the Borax Company (see *Higgins v. Eva*, 75 Cal. Dec. at 727). In view of all these matters, it seems advisable to start the action and reduce the matter to judgment as soon as possible. There are also policy reasons which make it seem to our client desirable to do this. (Emphasis supplied.)

I am convinced that we can maintain an equity action and secure an accounting with respect to all of the ore which has been heretofore sold by Suckow, notwithstanding the apparent adverse nature of the McCord decision. I also think it easier to maintain this position in the Federal Court, and for many reasons that seems the preferable tribunal. I am not convinced, however, that the measure of net



## Defendant's Exhibit "A"—(Continued)

profit would be what Suckow should have received as distinguished from what he did receive for the ore, unless we first establish a definite ouster on his part. Be that as it may, it seems to me that for the present purposes we might well rest upon the proposition that notwithstanding the language of the McCord and similar decisions, the statute of Anne has become a part of the law of this state through the adoption of the common law (and on such questions as these the Federal Court is not bound, as I understand it, by the state decisions), and that Suckow, in selling the ore, was at all times trustee or bailiff for the Boxas Company as well as himself and his accountability measured by his actual profits; this position would be advantageous to us in any injunction proceeding.

In other words, I have no substantial doubt of our ability to maintain the action itself and procure an accounting. The thing which bothers me, however, is the question of any injunction. After considering your opinion, I am more doubtful than ever about our ability to obtain that relief, but these practical considerations appeal to me: Unless motion for temporary injunction is made, Suckow, will go along to suit himself, pursuing all of the objectionable practices in which he is now engaged; if we fail in our attempt to procure a temporary injunction, it will be, in my judgment, because of an offer made in that proceeding to segregate the ore, leaving one pile for us to take when we please; you



## Defendant's Exhibit "A"—(Continued)

will note that in the redraft of the bill I have sought to discount the effect of such an offer when and if made; in the light of these allegations, I think it reasonably certain that we can in the event of denial of injunction, procure an order which will be expressly conditioned upon Suckow's making a continuous and a fair segregation of the ore. The cost of production at the mouth of the mine is now at least \$3.00 per ton, almost twice the Borax Company's cost at its Kramer Property. If Suckow has to produce two tons for each ton that he takes, it costs him in cash \$6.00 per ton to perform his Gembo contract before the ore has ever left the mouth of the mine, and all that he gets to offset this \$6.00 is a possible lien on the Borax Company's half for \$3.00 and the proceeds of the Gembo contract. If our people are right, to the effect that the Gembo contract cannot be performed at a profit in the face of present market prices, this segregation of the ore will break Suckow's back before long.

There is only one thing that can prevent it and that is an increase in market prices, which would, as you know, be most acceptable to our client. Perhaps this conditional order would be the fulcrum upon which they could pry Suckow into some kind of sensible cooperation. It seems to me, therefore, that it is well worth while for us to attempt to procure a temporary injunction and that the move cannot result in any real detriment to us. At most,

Defendant's Exhibit "A"—(Continued)

it will give Suckow a temporary flush of victory, which will, however, quickly dissipate when he finds that he is breaking his own back. (Emphasis Applied.)

Mr. Baker and Mr. Zabriskie will be in Los Angeles on one of their customary visits about the first of April, Mr. Baker has it in mind to have a conference of some kind with Suckow at that time and it seems to me that if we should file our suit and have our application for temporary injunction so noticed that it would be returnable a few days after Mr. Baker's arrival, the state would be very nicely set for an advantageous conference. (Emphasis supplied.)

I note what you say about procuring from Suckow a definite refusal to permit the Borax Company to occupy the premises jointly with him, I have not the deposition before me, but am inclined to think that that testimony, coupled with the attorney's advice there shown and the correspondence about which he there testified, are sufficient to establish an ouster. I never am able to get a definite Yes or No out of Suckow on anything, and I very much fear that if we made a new demand upon him, we would either meet with complete silence or an equivocal answer which would leave us in no better position than that which we now occupy.

I have noted what you said about joining Gembo as a defendant. It seems to me, however, that it is

## Defendant's Exhibit "A"—(Continued)

a good tactical move, in the first place, because of the effect on both Suckow and Gembo. Moreover, I fear that the Gembo might be held an indispensable party, in which case its absence would be fatal to the suit; on the other hand, if Gembo is held an improper party, it can be dismissed and no harm has been done to any one. (Emphasis supplied.) I am also sending you with the redraft of the bill a copy of affidavits which I have just received from Mr. Baker and Mr. Johnson relative to European market prices and costs. These can, of course, be supplemented by local affidavits as to costs on this side of the water.

As soon as you have had an opportunity to consider this redraft of the bill, I would like to have you get in touch with me by telephone or otherwise, and unless you are entirely satisfied to follow the procedure here outlined, I would like to have a conference with you at the earliest possible date either in San Francisco or Los Angeles as may prove to be mutually convenient.

Very truly yours,

/s/ A. W. ASHBURN,

Of Newlin & Ashburn.

AWA:K    CC—Mr. C. M. Rasor

[Endorsed]: Filed: Mar. 26, 1945. C. W. Calbreath, Clerk.

Defendant's Exhibit "A"—(Continued)

United States of America,  
Northern District of California—ss:

CERTIFIED COPY

I, C. W. Calbreath, Clerk of the United States District Court in and for the Northern District of California, do hereby certify that the annexed and foregoing is a true and full copy of the original Exhibit "A" in the case of United States of America, vs. Borax Consolidated, Ltd., et al., Civil action No. 23690-G, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at San Francisco, Calif., this 8th day of April, A.D. 1948.

(Seal)                      C. W. CALBREATH,  
Clerk.

[Endorsed]: Filed April 7, 1948.

[Title of District Court and Cause.]

SUPPLEMENTAL AFFIDAVIT OF FRANK  
BUREN IN OPPOSITION TO MOTIONS TO  
DISMISS

United States of America,  
Northern District of California,  
City and County of San Francisco—ss.

Frank Buren, being first duly sworn, deposes and says:

That at the time he first became associated with the late Dr. John K. Suckow and his corporation, Suckow Borax Mines Consolidated, Inc., he found that it was a common practice for Dr. Suckow, his attorneys and others working with them on the Bankruptcy Case and the Equity Case to use the term "Borax Trust" when referring to the Borax Consolidated, Ltd., or the Pacific Coast Borax Company or the United States Borax Company. That affiant recalls having inquired of Dr. Suckow and his then chief counsel, the late Walter Haas, why, if the said corporations were a trust in the sense that they were controlling or monopolizing the borax business, Suckow did not proceed against them under the anti-trust laws and also use this as a defense in the said bankruptcy and equity cases. That their reply, in substance, to this query was that while they knew the said corporations were trying to control the output of mined borax ore, as distinguished from borax obtained from the lake brines, they had not yet succeeded in acquiring such control and the Suckow interests would not be able



to prove in court that they (Borax Consolidated and affiliates) were violating the law, especially since the Suckow Company and the Western Borax Company were at that time (1932) mining, calcining and selling a considerable quantity of borax ore. That in addition to this crude borax coming from the mines of the Suckow and Western companies, substantial quantities of refined borax obtained from the waters or brine of Searles Lake were being sold in the markets of the world, apparently in competition with the so-called "Borax Trust" by the American Potash & Chemical Company and the Stauffer Chemical Company. That is to say, at that time and on through the entire period of affiant's connection with the Suckow interests, terminating early in the year 1940, affiant believed that the American Potash & Chemical Company and the Stauffer Chemical Company, and the Western Borax Company (until its purchase by Borax Consolidated) were active and legitimate competitors of Borax Consolidated, Ltd., and its subsidiaries, Pacific Coast Borax Company and United States Borax Company.

That during all of said period affiant knew of his own knowledge, from statements made to him by Dr. Suckow and his counsel, that neither Dr. Suckow nor any of his various attorneys appearing in said cases, had any tangible or competent evidence, or even any belief, that the said Borax Consolidated, Ltd., and affiliates (Pacific Coast Borax Company and United States Borax Company) referred to by them as the "borax trust" were in fact

monopolizing or controlling the borax business, or had any agreement with the other borax producers, such as American Potash & Chemical Company and Stauffer Chemical Company, to control such business. That if Dr. Suckow or his counsel had any such evidence or belief affiant was in position to have known about it, because in addition to his duties as secretary of the Suckow corporation, he acted as the company's office manager and conducted its correspondence in selling and shipping its calcined borax ore to the company's European customers, under Dr. Suckow's direction. That further in his capacity as Dr. Suckow's personal attorney and one of the Suckow corporation's attorneys, affiant participated in all conferences between the Doctor and his various other counsel and knew their plans for offensive and defensive legal action.

That in the course of his controversy with the so-called "Borax Trust," Dr. Suckow had on his legal staff at various times one or another of most of the prominent legal firms of Los Angeles, among which were Gibson, Dunn & Crutcher, Lawler & Degnan, Haas & Dunigan, O'Melveny, Tuller & Myers, and McAdoo & Neblett. That the pleadings and trial of both the Bankruptcy Case and the first trial of the Equity Case (No. C-107-M) were conducted by the late Walter Haas. That the proceedings leading to the reopening of the said Equity Case were conducted by the firm O'Melveny, Tuller & Myers. That as is well known, this latter firm is, or at that time was, one of the largest, ablest and best quipped law firms in the State of California,

with offices occupying an entire floor in the Title Insurance and Trust Building, in Los Angeles. That affiant conferred with them frequently during the time they were engaged on the Suckow case and knows that they exhausted every legal means of defending the Suckow interest in this suit and had there been any known competent evidence that the plaintiff (Borax Consolidated, Ltd., and subsidiaries) were all or any part of a combination in restraint of trade, or participating in an illegal conspiracy, to monopolize or control the borax business, this firm certainly would have taken advantage of it at that time.

That affiant heard the arguments of counsel for the defense in the present case made on April 7th and has read the transcript of proceedings on April 3rd, wherein they contend that the pleadings in the Equity case and the Bankruptcy case, verified by Dr. Suckow, and the statements of Mr. Tuller and Mr. Neblett of Suckow counsel, support their contention that Dr. Suckow and said counsel had knowledge of the fact that defendants herein were engaged in a conspiracy to control the output and price of borax, long prior to the adjudication of the Government's case against certain of said defendants. That affiant knows of his own knowledge, from statements made to him by Dr. Suckow, Mr. Tuller and Mr. Neblett that neither of them had any such knowledge or information, and that if they had had any competent evidence of such character they would have used it against the plaintiffs in the Equity and Bankruptcy cases.

That affiant knows of his own knowledge that the

principal purpose of Dr. Suckow and the Suckow corporation in appearing before the United States Senate Committee and presenting the said corporation's bankruptcy case to this committee, was in furtherance of the hope that said committee might, through the use of its powers to summon and examine witnesses, obtain evidence as to whom were responsible for the filing of the petition in involuntary bankruptcy against the Suckow corporation. That, as the transcript of the proceedings before said committee will show, when the attorney for the petitioning creditors in said bankruptcy case was asked, under oath, who had paid the expenses in that case, he declined to answer, and though threatened with citation for contempt of court, he persisted in such refusal and never did answer the question.

That had this question been answered, correctly, it would have supplied an important link in the chain of evidence needed at that time to uncover the 1929 conspiracy of which the Suckow interests then had no knowledge or information whatsoever.

That affiant knows of his own knowledge that Dr. Suckow would not have entered into the said agreement of 1934 had he not been forced to do so by financial circumstances. That due to the long series of litigations in which he had engaged, and the fact that his mine had been closed and no further income was being received from his borax business, he had become financially embarrassed to the extent that it became necessary for him to borrow money in small sums from personal friends and associates and toward the last was even compelled to give a chattel



mortgage on his household furniture in his residence at 1283 Third Avenue, Los Angeles, California, in order to obtain funds to pay for the transcripts on appeal and other incidental expenses in connection with this litigation. That in this connection affiant knows of his own knowledge, because he prepared the letter for Dr. Suckow's signature and saw him sign it, that he wrote to Eduard Bruckner, his representative in Hamburg, Germany, for a personal loan of \$1,000, which was received in due course, and later asked Mr. Bruckner to endeavor to obtain larger sums of money for the Dr. Suckow's use in said litigation from other borax customers in Germany and England, which was not received.

That in this same connection, Dr. Suckow, under date of July 16, 1933, wrote the following letter to John Stauffer, Sr., who was the founder and then president of the Stauffer Chemical Company at San Francisco, California, one of the defendants herein:

“My dear Mr. Stauffer:

“It has been a long time since I last saw you, and in the meantime I have had a great deal of trouble. Just now I am in a particularly difficult situation and I am wondering, Mr. Stauffer, if you could find it possible to come to my assistance, financially. Anything at all that you could do for me would be very greatly appreciated. I feel sure that we could work out something satisfactory to both of us if I could come up to San Francisco and have a talk with you.

“Please consider for a little while what I have



asked before answering, and if you think that any deal regarding the borax business would be out of the question, perhaps you could, anyway, help me out a little, in the way of a loan—I could give you very good security, and whatever dealings we might have would be kept in the strictest confidence.

“The last time I saw John he mentioned that you were not quite well, but I sincerely hope that you are feeling much better now, and that you will allow me to come and see you.

“Any suggestions that you might offer will be well received. An answer at your earliest convenience will be greatly appreciated.

“My kindest regards to yourself and Mrs. Stauffer.

“Most sincerely,

/s/ JOHN K. SUCKOW.”

That no answer was ever received to the above letter by Dr. Suckow.

That affiant knows of his own knowledge from statements made to him by Dr. Suckow that he did not at this time know, nor did he at any time during the remainder of his life know, that the Stauffer Chemical Company was a party to the said general conspiracy of 1929, or that there was any such conspiracy.

That affiant knows of his own knowledge that on or about March, 1934, Dr. Suckow in connection with his said financial embarrassment sold a 10% interest in his entire holdings in the borax business for the sum of Four Thousand (\$4,000.00) Dollars

to Mr. Joseph Jensen, which sum was only a fraction of the real value of said holdings.

Affiant knows of his own knowledge that up until the last day before Dr. Suckow executed the contract for the sale to the Borax Consolidated, Ltd., on August 15, 1934, that he was still opposed to making the deal and was resorting to every possible means to raise money which would enable him to hold on to his property and it was not until he had sent a telegram to the Clerk of the United States Circuit Court of Appeals at San Francisco, inquiring whether a decision had been rendered in the Suckow Bankruptcy case and had received a negative reply on August 14, 1934, and after he had received the following letter from Mr. Allen Ashburn, demanding that the contract be signed, that Dr. Suckow permitted the transaction to proceed:

“August 13, 1934.

“Mr. Frank Buren,  
891 Crenshaw Boulevard,  
Los Angeles, California.

“In re: Suckow Purchase.

“Dear Sir:

“Referring to the proposed purchase by Pacific Coast Borax Company of the Suckow properties and the revised papers which we sent you in our letter of August 8, 1934.

“In view of matters which we have just discovered and which I mentioned to you on the telephone on Saturday, we are now authorized to say to you, and to Dr. Suckow and his wife through copy of this letter, that unless this matter is placed in escrow

by the close of business hours on Wednesday, August 15, 1934, the deal automatically expires and any offer of Pacific Coast Borax Company at that time are withdrawn.

“We are sending copy of this letter to the Trustee in Bankruptcy and his attorney.

“Very truly yours,

/s/ A. W. ASHBURN  
of Newlin & Ashburn.

AWS:S

“CC to Dr. John K. Suckow, Mr. Walter Moses, Mr. Hubert F. Laugharn, Mr. F. M. Jenifer.

/s/ FRANK BUREN,  
Affiant.

Subscribed and sworn to before me this 13th day of April, 1948.

(Seal)      /s/ JUSTIN P. SMITH,  
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed April 13, 1948.

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[Title of District Court and Cause.]

Action for treble damages brought pursuant to 15 U.S.C.A. 15. Motion for dismissal granted in accordance with opinion.

Thurman W. Arnold of Washington, D. C., and Sterling Carr of San Francisco, California, attorneys for plaintiffs.

Ray J. Coleman, Coleman & McDonald, all of Los Angeles, California, Maurice E. Harrison, Moses

Lasky and Brobeck, Phleger & Harrison, all of San Francisco, California attorneys for defendants Borax Consolidated, Ltd., Pacific Coast Borax Company, United States Borax Company, James M. Gerstley, Frank M. Jenifer and Bank of America National Trust and Savings Association as Executor of the Last Will and Testament of Clarence M. Rasor, Deceased.

Vincent H. O'Donnell of San Francisco, California, attorney for defendant Stauffer Chemical Company.

John L. Reith of Oakland, California, attorney for defendant West End Chemical Company.

Oliver & Donnally, Fulton, Walter & Halley, all of New York City, New York, and Charles A. Beardsley of Oakland, California, attorneys for defendant American Potash & Chemical Corporation.

### MEMORANDUM OPINION

Roche, District Judge: Plaintiffs bring this treble damage action under the Federal Anti-Trust Laws, 15 U.S.C.A. § 15 and 15 U.S.C.A. §§ 1 and 2, to recover \$15,000,000.00 for damages alleged to have been sustained by them as a result of a general conspiracy on the part of the defendants, unlawfully and in violation of the Sherman and Clayton Acts, to monopolize and restrain trade in the borax industry.

Plaintiffs allege that this said conspiracy came into existence in 1929 and continue in force up to and through the date of the commencement of this action, September 11, 1947. Plaintiffs complain that this conspiracy was a fraud upon them which resulted in the destruction of their businesses and that



they, the plaintiffs, only acquired knowledge of the existence of such conspiracy in 1944 as a result of an action brought at that date by the United States against certain of the defendants for alleged violations of the Federal Anti-Trust Laws.

The complaint further alleges that certain overt acts in furtherance of the conspiracy took place from 1913 to 1942, with the following results.

In 1913, John K. Suckow, whose estate is a party plaintiff, sold to the defendant United States Borax Company (hereafter referred to as U.S.B.C.), for \$4,500.00, all of his interest in a certain piece of California property containing a deposit of colemanite, which is a source of borax. In 1917, John K. Suckow (hereafter referred to as Suckow) sold a 75% interest in a similar piece of property to defendant Stauffer Chemical Company for the sum of \$60,000.00 and in consideration of the holding by him of the position of manager in the operating company that was to work the mineral deposit. In 1918, Suckow, the Stauffer Chemical Company and defendant Pacific Coast Borax Company (hereafter referred to as P.C.B.C.) entered into an agreement creating the Suckow Chemical Company, with Suckow controlling the company and owning certain shares of its stock. Plaintiffs allege that Suckow was prevented from ever carrying on or operating the Suckow Chemical Company as had been contemplated and that for this reason, Suckow, in 1925, sold all of his stock in the Suckow Chemical Company to defendant P.C.B.C. for \$150,000.00. Suckow paid \$10,000.00 as commission for such sale to one Victor C. Emden, in ignorance of the alleged fact



that Emden was acting as agent for P.C.B.C. at the time of the sale.

In 1918, an agreement was entered into between Suckow and U.S.B.C. providing that each should have a full one-half interest in certain mining locations (for which claims had been filed by Suckow in 1916) to which patents were to be acquired by U.S. B.C. (whose interest was derived from a third party who had made adverse claims to certain of the locations in 1917). This agreement of 1918 was performed in part, but subsequent events led to the declaration by each that the other was failing to perform according to the agreement. This led to an action which was instituted by the Borax Consolidated, Ltd. (hereafter referred to as B.C.L.) in 1927 in the Superior Courts of California, whereby an injunction was sought against mining operations by Suckow on certain of the property involved in the 1918 agreement, an accounting by Suckow to the plaintiff B.C.L. and a determination of the rights of B.C.L. This action was dismissed by B.C.L. in 1930. In 1929 Suckow brought action against U.S.B.C. and certain of the other defendants herein to compel the transfer to him of an interest in certain mining properties according to the 1918 agreement. This action ended in a consent judgment being entered according to an agreement of 1934 as hereafter described.

In 1929 the Suckow Borax Mines Consolidated, Inc. was created and John K. Suckow transferred all of his mining properties to such company (hereafter referred to as the Suckow Company).

In 1930 B.C.L. brought an action in the United States District Court, seeking an injunction restrain-

ing the Suckow Company from further mining operations, damages and an accounting from the Suckow Company. The injunction was denied but the plaintiffs allege that the Suckow Company was forced to cease its mining operations because of the allegedly exorbitant value placed upon the ore as a result of the trial upon this action in 1932. In 1931 P.C.B.C. and others of the defendants caused an involuntary petition in bankruptcy to be filed against the Suckow Company, causing the Suckow Company to be duly adjudged a bankrupt in 1933, with a trustee appointed to manage it. The Suckow Company made an appeal to the U. S. Circuit Court of Appeals for the Ninth Circuit, but dismissed such appeal as a part of the agreement of 1934. In 1934, P.C.B.C. secured a lease of the mining properties of the bankrupt company for a period of five years. Plaintiffs then proceeded upon further litigation to contest this lease. In 1932, P.C.B.C. brought a patent infringement action against the Suckow Company and an injunction was issued by the U. S. District Court restraining the Suckow Company from using a particular method of calcining borax. An appeal was likewise taken from this order.

In 1934, an agreement was entered into between the plaintiffs and P.C.B.C. providing for the transfer of certain parcels of real property to P.C.B.C., the payment of \$150,000.00 to Suckow, the release of all possible claims against any of the defendants, the mutual dismissal of all legal actions by each of the parties against any of the others and the granting of another lease from the trustee of the bankrupt company's property. In 1938, the bankruptcy pro-

ceedings were terminated and the property restored to the Suckow Company, subject to the terms of the lease mentioned. In 1942, the plaintiffs sold to the defendants all of the mining property that had been involved in the prior transactions, receiving therefor the sum of \$350,000.00.

The plaintiffs further allege that the defendants caused a destruction of some of their mining properties during the period defendants were in possession under the lease and that the defendants also caused the destruction of the business possessed by the plaintiffs with certain European companies, which offered the only outlet for plaintiff's product.

Plaintiffs claim that all of these events were caused or entered into by them only because of harrassments, persecutions and threats on the part of the defendants and that plaintiffs were unaware of the general conspiracy among the defendants to monopolize the borax industry.

It is plaintiffs' position that this action is brought upon the existence of the general conspiracy and the damages suffered therefrom. The above described affairs are presented by plaintiffs not as the basis of the cause of action for damages, but as evidence of overt acts on the part of the defendants for the purpose of proving the existence of such conspiracy.

To summarize, plaintiffs present their case according to the following points. This is an action in equity upon the continuing conspiracy, which originated in 1929, with overt acts shown only for the purpose of demonstrating such conspiracy. The statutes of limitation are not controlling, since this is not an action at law, but if they were controlling,

they would be tolled by reason of a Federal moratorium statute running from 1942 to 1946. In addition, an action by the United States under the Anti-Trust Laws against certain of the defendants, commenced in 1944 and terminating in 1945, suspended any statutes of limitations for that period by reason of the provisions of 15 U.S.C.A. 16. Fraud on the part of the defendants in denying their violations of the Anti-Trust Laws prevents, under the applicable California law, the statute of limitations from beginning to operate until discovery by the plaintiffs of their cause of action.

Defendants answer with the following arguments. This is a legal action to which the statutes of limitation are applicable. The only cause of action available to private parties under the Anti-Trust Laws is that for damages suffered, not the mere existence of a conspiracy in violation of such statutes. The California statute of limitations has run on all of plaintiffs' possible causes of action as established by the pleadings, except for any injuries or damages that might have been suffered in 1942. The statute has not been tolled by reason of fraud on the part of the defendants, since a denial of a violation of law does not constitute fraud. The Federal moratorium statute is not applicable to suits by private parties. There is a failure on the part of the plaintiffs to state a cause of action for any damages alleged to have been suffered in 1942. There were releases made by the plaintiffs of all existing or by them with the defendants. The defendants move to dismiss for failure to state a claim upon which



relief may be granted, to dismiss because the action is barred by the statute of limitations and for a summary judgment.

The questions immediately presented are: (1) is this an action at law or an action in equity; (2) if this be an action at law, does the California statute of limitations bar any of the plaintiffs' possible causes of action; and (3) is there any cause of action pleaded by the plaintiffs upon which relief may be granted?

This is an action at law, *Burnham Chemical Company v. Borax Consolidated, Ltd., et al.*, (C.C.A. 9) . . . F. (2d) . . . , decided October 27, 1948; *Meeker v. Leheigh Valley Railroad Co.*, 162 F. 354; *Hartford-Empire Co. v. Glenshaw Glass Co.*, 3 F.R.D. 50; and not a suit in equity, *Fleitman v. Welsbach Street Lighting Co.*, 240 U. S. 27; *Burnham Chemical Company v. Borax Consolidated, Ltd.*, *supra*; *Meyer v. Kansas City Southern Ry. Co.*, 84 F. (2d) 411; to which the state statute of limitations applies. *Chatanooga Foundry etc. v. Atlanta*, 203 U. S. 390; *Barnes Coal Corp. v. Retail Coal Merchants Assn.*, 128 F. (2d) 645; *Foster & Kleiser Co. v. Special Site Sign Co.*, 85 F. (2d) 742, cert. den. 299 U. S. 390; *Mormand v. Paramount Pictures Distributing Co.*, 36 F. Supp. 568.

California Civil Code § 338, subd. 1., provides a three years statute of limitations for liabilities created by statute other than for a penalty or forfeiture.

The cause of action in a suit brought under 15 U.S.C.A. § 15 is for injuries suffered as a result of a conspiracy in violation of the Anti-Trust Laws



and not the existence of the conspiracy itself. *Burnham Chemical Company v. Borax Consolidated, Ltd.*, supra; *Foster & Kleiser Co. v. Special Site Sign Co.*, supra. The Fourth Circuit Court of Appeals has expressed the law in *Glenn Coal Co. v. Dickinson Fuel Co.*, 72 F. (2d) 885, at page 887:

“In a civil suit under this section, the gist of the action is not merely the unlawful conspiracy or monopolization \* \* \*, but is damage to the individual plaintiff resulting proximately from the acts of the defendant which constitute a violation of the law. A mere conspiracy with intent to violate the law while it may be the basis of a valid indictment under the criminal sanction of the Anti-Trust Act, does not give rise to a personal civil suit for damages.”

All of the cases cited by the plaintiffs as upholding their contention that the existence of a conspiracy is in itself sufficient basis for a cause of action are cases of criminal prosecution by the government. A private action for damages is not an action for the common good, *Shurtz v. Foster & Kleiser Co.*, 29 F. Supp. 162; and the fact that a criminal action may be instituted by the government by reason of the existence of a conspiracy to violate the Anti-Trust Laws does not add to the right given to private individuals to sue for damages caused by such a conspiracy. *Burnham Chemical Company v. Borax Consolidated, Ltd.*, supra.

The statute of limitations in California runs from the date when the injury was inflicted and the damage was suffered. *Rose v. Dunk-Harrison Co.*, 7 Cal. App. (2d) 502; *Lathing v. Gillette*, 95 Cal. 317. While the existence of fraud may create an exception to

this rule, *Pashley v. Pacific Elec. Ry. Co.*, 25 Cal. (2d) 226; such fraud needs, as appears from the cases cited by the plaintiffs themselves, to be a positive concealment of the facts giving rise to the cause of action despite a duty to disclose such facts. In none of the cited cases is there any rule to the effect that a mere denial of a violation of law constitutes a fraud upon the injured party so that the statute is tolled by reason of the exception to the general rule. Too, the record seems to firmly establish the fact that the plaintiffs knew, or had reason to believe, that the acts of the defendants which caused the claimed damages were a violation of the Anti-Trust Laws. Such fact precludes plaintiffs from availing themselves of this exception which would toll the statute of limitations until the alleged date of discovery in 1944.

The complaint recites at length a series of events taking place between 1913 and 1934 and culminating finally in the sale of property by the plaintiffs to the defendants in 1942. Allegedly, these events were caused by the conspiracy which is the basis of this action. It is these events themselves however, which form the basis of any causes of action under the Anti-Trust Laws. As the above discussion shows, the California statute of limitations is a bar for any of the plaintiffs' possible causes of action arising from 1913 to 1934. Apart from such bar however, no cause of action is stated by any of the claims made by the plaintiffs, including any claim with respect to the transaction of 1942.

In order to obtain treble damages for an alleged conspiracy and combination in restraint of trade,

the complaint must affirmatively show injuries to plaintiffs' business or property and it is insufficient merely to allege violations of the Anti-Trust Laws and to claim damages resulting therefrom. *Westmoreland Asbestos Co. v. John-Manville Corp.*, 30 F. Supp. 389. The instant complaint fails to affirmatively allege any injuries suffered by reason of the defendants, alleged violations of the Anti-Trust Laws. In every transaction with the defendants the plaintiffs have received consideration or an adjudication of their rights by a court having jurisdiction.

The 1942 sale well illustrates this failure common to all of the plaintiffs' possible causes of action as stated in the complaint. Plaintiffs allege a sale of property to the defendants in consideration of receiving \$350,000.00 and further allege that such sale was caused by the conspiracy of the defendants. There is no allegation of damages suffered or injuries received by the plaintiffs. On the face of the complaint, the price received by the plaintiffs does not appear to be inadequate consideration. In a like manner, the complaint fails to affirmatively show injuries to plaintiffs' business or property for any of the transactions or events delineated. Simply stated, the complaint alleges damages by reason of the alleged existence of the conspiracy. A mere claim of damages by reason of the existence of a conspiracy is not sufficient to state a cause of action, for a plaintiff must have received some injury in order to be able to sue under the Anti-Trust Laws. *Gibbs v. McNeeley*, 102 F. 594; *Noyes v. Parson*, 245 F. 689.

In accordance with the foregoing and in answer to the questions raised at the beginning of this discus-

sion, this Court holds that this is an action at law, in which no cause of action lies by reason of the bar of the applicable California statute of limitations, and by reason of the failure of the complaint to state a claim upon which relief may be granted. Therefore,

It Is Hereby Ordered that the motion of the defendants to dismiss the complaint for failure to state a claim upon which relief may be granted be and the same hereby is Granted and said complaint is hereby Dismissed.

Dated November 22, 1948.

/s/ MICHAEL J. ROCHE,

United States District Judge.

Entered in Civil Docket Nov. 24, 1948.

[Endorsed]: Filed Nov. 22, 1948.

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[Title of District Court and Cause.]

NOTICE OF MOTION TO ALTER OR AMEND  
THE JUDGMENT OF DISMISSAL HERETOFORE  
ENTERED HEREIN UPON NOVEMBER 22, 1948.

To Defendants, above named, and to Their Respective Attorneys:

You, and each of you, Will Please Take Notice that upon the 13th day of December, 1948, plaintiffs above named will move the above-entitled Court at its Courtroom in the Post Office Building, Seventh and Mission Street, in the City and County of San Francisco, State of California, at the hour of Ten



o'clock a.m., or as soon thereafter as counsel can be heard, for an order altering or amending the judgment of dismissal heretofore filed herein upon the 22nd day of November, 1948, by striking therefrom the last two paragraphs of said judgment and inserting in lieu thereof the following:

"It is hereby ordered that plaintiffs, above named, may, if they so elect, move this Court for an order permitting them to amend their complaint on file herein, said motion, if any, to be made on or before ten (10) days from the date of this order permitting the filing of such motion to amend."

/s/ THURMAN ARNOLD,

/s/ STERLING CARR,

Attorneys for Plaintiffs.

Points and Authorities in Support of  
Foregoing Motion:

R.C.P. Rule 59(e)—*Louisiana Farms, etc., v. Great Atlantic, etc.*, 131 Fed. (2) 419.

*Stevens Co. v. Foster & Kleiser Company*, 311 U. S. 255, 61 S. Ct. 210, particularly page 261 of Official Report.

*United States v. Standard Oil Company, etc.*, 7 F.R.D. 338, particularly Subdv. (3).

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 2, 1948.



[Title of District Court and Cause.]

ORDER DENYING MOTION TO AMEND OR  
ALTER JUDGMENT

It Is Ordered that the plaintiffs' motion to amend or alter the judgment entered herein on November 24, 1948, be and the same hereby is Denied.

Dated December 17, 1948.

/s/ MICHAEL J. ROCHE,  
United States District Judge.

[Endorsed]: Filed Dec. 17, 1948.

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In the District Court of the United States for  
the Northern District of California, Southern  
Division

No. 27646-R

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation, et al.,

Plaintiffs,

vs.

BORAX CONSOLIDATED, LTD., a corporation,  
et al.,

Defendants.

JUDGMENT

Defendants' several motions to dismiss the complaint having been granted, and the complaint dismissed, and plaintiffs' motion to alter or amend judgment having been denied,

It Is Hereby Ordered, Adjudged and Decreed

that the action herein be and it is hereby dismissed against each and all of the defendants, with prejudice, with costs to defendants, and that plaintiffs take nothing by their action.

Dated December 18, 1948.

/s/ MICHAEL J. ROCHE,  
District Judge.

Not Approved.

Approved as to form, as provided in Rule 5(d).

/s/ STERLING CARR,  
Attorney for Plaintiffs.

Entered in Civil Docket Dec. 20, 1948.

[Endorsed]: Filed Dec. 18, 1948.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the above entitled Court, and to the Clerk thereof,  
and to defendants in the above entitled action,  
and to their, and each of their respective Counsel:

Notice is hereby given that plaintiffs above named hereby appeal to the United States Court of Appeals for the Ninth Circuit and from the order and judgment made and entered herein on the 22nd day of November, 1948, granting the motions of defendants herein to dismiss the complaint of plaintiffs herein for failure to state a claim upon which relief may be granted, and further from the order made and entered herein on December 17, 1948, denying the motion of plaintiffs to amend said order and judg-

ment entered herein on November 22, 1948, and further from the so-called judgment made and entered herein upon the 20th day of December, 1948, and reading in part as follows, to wit:

“It Is Hereby Ordered, Adjudged and Decreed that the action herein be and it is hereby dismissed against each and all of the defendants, with prejudice, with costs to defendants, and that plaintiffs take nothing by their action.”

Dated December 20, 1948.

/s/ THURMAN ARNOLD,

/s/ STERLING CARR,

Attorneys for Plaintiffs.

The names and addresses of the attorneys for the Defendants are as follows:

Ray J. Coleman, Esq., Coleman & McDonald, 1002 Quinby Building, Los Angeles 14, Calif.; Maurice E. Harrison, Esq., Moses Lasky, Esq., Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco 4, Calif. Attorneys for Defendants, Borax Consolidated, Ltd., Pacific Coast Borax Company, United States Borax Company, James M. Gerstley and Frank M. Jenifer.

Vincent H. O'Donnell, Esq., Mills Building, San Francisco 4, Calif., Attorney for Defendant, Stauffer Chemical Company.

John L. Reither, Esq., Central Bank Building, Oakland, California, Attorney for Defendant, West End Chemical Company.

Oliver & Donnally, Esqs., Fulton, Walter & Halley, Esqs., all of New York City, and in care of:

Charles A. Beardsley, Esq., 1516 Central Bank Bldg., Oakland 12, California; Charles A. Beardsley, Esq., 1516 Central Bank Bldg., Oakland 12, California, Attorneys for Defendant, American Potash & Chemical Corporation.

[Endorsed]: Filed Dec. 20, 1948.

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[Title of District Court and Cause.]

### COST BOND ON APPEAL

Whereas, the Plaintiffs herein have prosecuted or are about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment made and entered herein November 22, 1948, and from the order denying motion to amend or alter judgment made and entered herein on December 17, 1948 and from the judgment made and entered herein on December 18, 1948 by the District Court of the United States for the Northern District of California, Southern Division.

Now, Therefore, in consideration of the premises, the undersigned, Fidelity and Deposit Company of Maryland, a corporation duly organized and existing under the laws of the State of Maryland and duly authorized and licensed by the laws of the State of California to do a general surety business in the State of California, does hereby undertake and promise on the part of Appellants that they will prosecute their appeal to effect and answer all costs if they fail to make good their appeal, not exceeding the sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, to which amount said Fidelity and Deposit

Company of Maryland acknowledges itself justly bound.

And further, it is expressly understood and agreed that in case of a breach of any condition of the above obligation, the Court in the above entitled matter may, upon notice to the Fidelity and Deposit Company of Maryland, of not less than ten (10) days, proceed summarily in the action or suit in which the same was given to ascertain the amount which said Surety is bound to pay on account of such breach, and render judgment therefor against it and award execution therefor.

Signed, Sealed and Dated this 20th day of December, 1948.

(Seal.)

FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND,

By /s/ W. G. RISDON,  
Attorney-in-Fact.

Attest:

/s/ G. KEHLENBECK,  
Attesting Agent.

State of California,  
City and County of San Francisco—ss.

On this 20th day of December, A. D. 1948, before me, Belle Jordan, a Notary Public in and for the City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared W. G. Risdon, Attorney-in-Fact, and G. Kehlenbeck, Agent, of the Fidelity and Deposit Company of



Maryland, a corporation, known to me to be the persons who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same, and also known to me to be the persons whose names are subscribed to the within instrument as the Attorney-in-Fact and Agent respectively of said corporation, and they, and each of them, acknowledged to me that they subscribed the name of said Fidelity and Deposit Company of Maryland thereto as principal and their own names as Attorney-in-Fact and Agent respectively.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco the day and year first above written.

(Seal)            /s/ BELLE JORDAN,

Notary Public in and for the City and County of  
San Francisco, State of California.

My commission expires Nov. 9, 1952.

The premium charged for this bond is \$10.00 Dollars per annum.

[Endorsed]: Filed Dec. 20, 1948.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH  
APPELLANTS INTEND TO RELY ON AP-  
PEAL

Now come Plaintiffs above named and, pursuant to the Federal Rules of Civil Procedure, set forth a statement of the points upon which appellants intend to rely upon appeal, as follows:

1. The District Court erred in granting the motions of appellees, above named, to dismiss the complaint of appellants as amended, and which order was filed herein upon the 22nd day of November, 1948.

2. The District Court erred in granting the motion of said appellees for a summary judgment, and which order was filed herein upon the 22nd of November, 1948.

3. The District Court erred in making its order filed herein on November 22, 1948 and dismissing the complaint of plaintiffs and appellants for failure to state a claim upon which relief may be granted.

4. The District Court erred in making its order denying the motion of plaintiffs and appellants to amend or alter the judgment entered herein, and which order denying said motion was filed herein on December 17, 1948.

5. The District Court erred in failing to deny the motions of defendants and appellees, and each of them, to dismiss and for summary judgment and filed herein by said appellees, and each of them.

6. The District Court erred in the following particulars:

In holding:

- (a) That this is an action at law.
- (b) That this is not a suit in equity.
- (c) That the State Statute of Limitations applies.
- (d) That the damages alleged are the gravamen of the action and not the conspiracy.
- (e) That the conspiracy charged upon is not the gravamen of the action.
- (f) That the Statute of Limitations runs from the date when the injury was inflicted and the damage suffered.
- (g) That the Statute of Limitations does not run from the last overt act performed pursuant to the conspiracy.
- (h) That fraud upon appellants was not shown on the face of the complaint.
- (i) That the allegations of the complaint, not specifically denied by appellees, were not admitted by them and, therefore, do not stand as admitted facts against them.
- (j) In failing to hold that upon this motion to dismiss and for summary judgment, the allegations of the complaint properly pleaded stand admitted by appellees.
- (k) That the Record establishes the fact that appellants knew, or had reason to believe, that the acts of appellees which caused the claimed damages were a violation of the Anti-Trust Laws.
- (l) That "belief" or "suspicion" on the part of appellants constituted discovery or knowledge.
- (m) That the complaint herein fails to allege af-

firmatively any injuries suffered by appellants by reason of appellees' violations of the Anti-Trust Laws.

(n) That in every transaction with appellees the appellants received consideration or any adjudication of their rights by a court having jurisdiction.

(o) That on the face of the complaint the price received by appellants does not appear to be inadequate consideration and further that the complaint fails to show affirmatively injuries to appellants' business or property for any of the transactions or events delineated.

(p) In failing to hold that the conspiracy charged was a continuing conspiracy.

(q) In failing to hold that the moratorium of 1942 and the extensions thereof tolled the statute of limitations pleaded by appellees.

(r) In failing to find that the cause of action alleged in the complaint, or some part thereof, was not barred by the Statute of Limitations.

(s) In failing to hold that the complaint on its face showed that appellees were guilty of fraud and the concealment thereof, against and from appellants.

7. The District Court erred in not granting appellants' motion to amend or alter the judgment ordered and/or entered herein upon the 22nd day of November, 1948, in the manner requested by appellants.

8. The District Court erred in granting judgment for appellees in accordance with the Judgment entered herein on the 20th day of December, 1948.

9. All of the points in the foregoing statement

apply to all, each and every of the appeals referred to in the Notice of Appeal heretofore filed by appellants herein on the 20th day of December, 1948.

Dated December 21, 1948.

/s/ THURMAN ARNOLD,

/s/ STERLING CARR,

Attorneys for Plaintiffs and Appellants.

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 21, 1948.

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[Title of District Court and Cause.]

DESIGNATION BY APPELLANTS OF  
CONTENTS OF RECORD ON APPEAL

To the Clerk of the above entitled Court:

The plaintiffs above named, also appellants herein, respectfully request that the following portions of the record, proceedings and evidence be included and contained in the Record on Appeal, to wit:

1. Complaint, and amendments thereto, of appellants on file herein;
2. The motions of defendants and appellees herein, and each of them, to dismiss and for summary judgment and filed herein;
3. The order of the Court denominated "Memorandum Opinion", dated November 22, 1948 and filed herein upon said date, dismissing the complaint as amended and on file herein;
4. The judgment of dismissal entered herein upon the 22nd day of November, 1948;
5. The notice of motion of appellants to alter or



amend the judgment of dismissal entered herein upon November 22, 1948;

6. The order of the above entitled Court, dated December 17, 1948, denying the motion of appellants to amend or alter judgment and filed herein on said December 17, 1948;

7. The Judgment entered herein on the 20th day of December, 1948;

8. Notice of Appeal of appellants herein;

9. Statement of Points upon which appellants intend to rely on appeal;

10. This Designation of Contents of Record on Appeal.

Dated this 21st day of December, 1948.

/s/ THURMAN ARNOLD,

/s/ STERLING CARR,

Attorneys for Plaintiffs and Appellants.

(Acknowledgment of Service.)

[Endorsed]: Filed Dec. 21, 1948.

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[Title of District Court and Cause.]

COUNTER-DESIGNATION BY CERTAIN AP-  
PELLEES OF CONTENTS OF RECORD ON  
APPEAL PURSUANT TO RULE 75 OF THE  
RULES OF CIVIL PROCEDURE

The appellees, Borax Consolidated, Ltd., Pacific Coast Borax Company, United States Borax Company, James M. Gerstley, Frank M. Jenifer, and Bank of America National Trust & Savings Association as Executor of the Last Will and Testament of

Clarence McAniffe Rasor, Deceased, each acting for itself, hereby designate the following portions of the record, proceedings and evidence, in addition to those designated by appellants, to be contained in the record on appeal taken by appellants on December 20, 1948:

1. "Affidavit of Moses Lasky in support of motions of defendants Borax Consolidated, Ltd., Pacific Coast Borax Company, United States Borax Company, James M. Gerstley, Frank M. Jenifer, and Bank of America National Trust & Savings Association as Executor of the Last Will and Testament of Clarence McAniffe Rasor to dismiss for failure to state a claim upon which relief may be granted, to dismiss because the action is barred by the Statute of Limitations, for a summary judgment, and to strike", said affidavit having been filed herein on February 2, 1948, together with Exhibits 1 to 15, inclusive, referred to in, part of, and filed with said affidavit.

2. Affidavit of Allen W. Ashburn filed herein on February 2, 1948, together with the attached copy of a certain "Affidavit of John K. Suckow".

3. Affidavit of Albert H. Bargion, filed herein on February 2, 1948.

4. Defendants' Exhibit A received in evidence on April 3, 1948 in support of defendants' motions to dismiss and for summary judgment consisting of the following:

- (a) Certified copy of "A petition for order to show cause why the trustee in bankruptcy should not execute and deliver a lease of the entire alleged bankrupt estate" and of "An amendment to a peti-

tion for order to show cause why the trustee in bankruptcy should not execute and deliver a lease of the entire alleged bankrupt estate" in certain proceedings in the District Court of the United States for the Southern District of California entitled "In the Matter of Suckow Borax Mines Consolidated, Inc., a corporation, Bankrupt, No. 16,938-H".

(b) Certified copy of original letter dated January 30, 1934 from William H. Neblett to the Honorable Harry Hollzer, Federal Building, Los Angeles.

(c) Affidavit of C. N. Olson.

5. The reporter's transcript of the proceedings of April 3, 7 and 13, 1948.

6. It is assumed that Item 1 in the "Designation by Appellants of contents of record on appel" reading, "Complaint, and amendments thereto, of appellants on file herein", calls for the inclusion in the record of the "First amendment to complaint" filed herein on or about April 7, 1948 and also of "Second amendment to complaint" filed herein on or about April 26, 1948, but if not so included appellees hereby designate said "First amendment to complaint" and said "Second amendment to complaint".

7. It is assumed that Item 2 in said designation by appellants reading "The motions of defendants and appellees herein, and each of them, to dismiss and for summary judgment and filed herein" calls for the inclusion in the record of the "Notice of motions of defendants Pacific Coast Borax Company, Borax Consolidated, Ltd., United States Borax Company, Frank M. Jenifer and James M. Gerstley to

dismiss for failure to state a claim upon which relief may be granted, to dismiss because the action is barred by the Statute of Limitations, for a summary judgment, and to strike" filed on February 2, 1948, and also the "Notice of motions of Bank of America National Trust & Savings Association, as Executor of the Last Will and Testament of Clarence McAniffe Rasor, Deceased, to quash service of summons and to dismiss for improper venue, to dismiss for failure to state a claim upon which relief may be granted, to dismiss because the action is barred by the Statute of Limitations, and to strike" filed on the same day, but if not so included, appellees hereby designate each of said notices of motions.

8. This counter-designation.

Dated December 28, 1948.

/s/ RAY J. COLEMAN,

/s/ COLEMAN & McDONALD,

/s/ MAURICE E. HARRISON,

/s/ MOSES LASKY,

/s/ BROBECK, PHLEGER &  
HARRISON,

Attorneys for Defendants Borax Consolidated, Ltd.,  
Pacific Coast Borax Company, United States  
Borax Company, F. M. Jenifer and James M.  
Gerstley.

/s/ MAURICE E. HARRISON,

/s/ MOSES LASKY,

/s/ BROBECK, PHLEGER &  
HARRISON,

Attorneys for Defendant Bank of America National Trust & Savings Association as Executor of the Last Will and Testament of Clarence McAniffe Rasor, Deceased.

[Endorsed]: Filed Dec. 29, 1948.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the parties.

Complaint.

First Amendment to Complaint.

Second Amendment to Complaint.

Affidavit of Allen W. Ashburn.

Affidavit of Albert H. Bargion.

Affidavit of Moses Lasky in Support of Certain Defendants to Dismiss, etc.

Exhibits 1 to 15, inclusive, Referred to in and Part of, Affidavit of Moses Lasky, etc.

Notice of Motions of Defendant, American Potash and Chemical Corporation, to Dismiss the Complaint, etc.

Notice of Motions of Bank of America National Trust and Saving Association, etc., to Quash Service of Summons and to Dismiss for Improper Venue, etc.



Notice of Motions of Defendants, Pacific Coast Borax Company, et al., to Dismiss for Failure to State a Claim, etc.

Notice of Motions of Defendant West End Chemical Company, a corporation, to Dismiss, etc.

Motions and Notice of Motions of Defendant Stauffer Chemical Company, to Dismiss, etc.

Substitution of Attorneys.

Affidavit of Paul O. Tobeler and 17 Exhibits.

Affidavit of Frank Buren in Opposition to Motions to Dismiss.

Affidavit of C. N. Olson—Defendant's Exhibit A.

Exhibit "A"—Copy of letter from A. W. Ashburn to William E. Colby.

Supplemental Affidavit of Frank Buren in Opposition to Motions to Dismiss.

Memorandum Opinion.

Notice of Motion to Alter or Amend Judgment of Dismissal Heretofore Entered Herein upon November 22, 1948.

Order Denying Motion to Amend or Alter Judgment.

Judgment.

Notice of Appeal.

Cost Bond on Appeal.

Statement of Points Upon Which Appellants Intend to Rely on Appeal.

Designation by Appellants of Contents of Record on Appeal.

Counter-Designation by Certain Appellees of Contents of Record on Appeal.

Two Volumes of Testimony.

In Witness Whereof, I have hereunto set my hand

affixed the seal of said District Court this 13th day of January, A. D. 1949.

(Seal)

C. W. CALBREATH,  
Clerk.

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In the Southern Division of the United States  
District Court for the Northern District of  
California

Before: Hon. Michael J. Roche, Judge.

No. 27646-R

SUCKOW BORAX MINES, CONSOLIDATED,  
INC., a corporation; MOJAVE BORAX COM-  
PANY, LTD., a corporation; PAUL O. TOBE-  
LER, Executor of the Last Will and Testament  
of John K. Suckow, Deceased, and RUTH E.  
SUCKOW,

Plaintiffs,

vs.

BORAX CONSOLIDATED, LTD., a corporation,  
et al.,

Defendants.

# REPORTER'S TRANSCRIPT

Saturday, April 3, 1948,

10:00 o'clock a.m.

Appearances: For Plaintiffs: Sterling Carr, Esq.  
For Defendants: Borax Consolidated, Ltd., Pacific  
Coast Borax Company, United States Borax Com-  
pany, Frank M. Jenifer, James M. Gerstley, Messrs.  
Brobeck, Phleger & Harrison, by Maurice E. Harri-  
son, Esq., and Moses Lasky, Esq., and Ray J. Cole-

man, Esq. [1 \*] For Defendant American Potash & Chemical Corporation: Charles A. Beardsley, Esq., Joseph Burns, Esq., Michael McCarthy, Esq. For Defendant Bank of America National Trust & Savings Association as Executor of the Estate of Clarence M. Rasor: Messrs. Brobeck, Phleger & Harrison, by Moses Lasky, Esq. For Defendant West End Chemical Company: John L. Reith, Esq. For Stauffer Chemical Company: Vincent O'Donnell, Esq.

Mr. Lasky: If your Honor please, there are five groups of defendants and five groups of attorneys. In order to simplify the matter we have consulted together, divided up the argument, and had arranged that Mr. Joseph Burns, from New York, would proceed first. So, to take care of that situation, I have been asked to make a very short preliminary statement of two or three minutes in order to outline what our division was, what the issues are, and who would discuss what issue.

The Court: Very well. With that understanding you may proceed.

Mr. Lasky: There are five groups of defendants here. The first group, Borax Consolidated, Pacific Coast Borax [2] Company, United States Borax Company, Frank M. Jenifer, James A. Gerstley—that group is represented by Brobeck, Phleger & Harrison, Mr. Harrison, myself, and Mr. Coleman from Los Angeles.

The next group is the American Potash & Chemical Corporation, represented by Mr. Joseph Burns, from New York, and Mr. Michael McCarthy, and Mr.

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\* Page numbering appearing at foot of page of original certified Reporter's Transcript.

Burns will present the argument on their behalf.

The third group is the Bank of America National Trust & Savings Association, as the executor of the Estate of Clarence Rasor, and I will present argument on behalf of that defendant.

West End Chemical Company is represented by Mr. John Reith, of Oakland, and the Stauffer Chemical Company is represented by Mr. Vincent O'Donnell in this city.

Each one of these groups of defendants has filed a motion to dismiss, a motion for summary judgment, and certain other motions.

The Bank of America, as Executor of the Estate of Rasor, has also filed a motion with respect to venue.

\* \* \* \*

[3]

The division of the argument we have made for the convenience of the Court and everyone else is that Mr. Burns will proceed first to discuss the fact that the complaint is barred by the statute of limitations on its face. After Mr. Burns has presented that, Mr. Maurice Harrison, in due course, will present the matter that the complaint is barred by the statute of limitations with respect to our motions for summary judgment, and in that connection will call your Honor's attention to the undisputed documents that we have brought before the Court.

Subsequent to Mr. Harrison's presentation, I shall present to the Court on the basis of the motion for summary judgment, and on the basis of the complaint, itself, the matter of releases, and will point out that there were several sets of releases given here, and that the plaintiff has received considera-



tion therefor totaling something in the neighborhood of \$1,000,000.

I shall also point out that with respect to certain parts of the complaint no cause of action has even been remotely stated. Later I shall present, if time permits, a brief motion on behalf of Rasor's Estate. No cause of action whatever is stated against Rasor.

Mr. Reith will then present the matter on behalf of West [5] End, in so far as there are any peculiarities with respect to his client that differ his case from that of the others whose case will already have been presented, and then Mr. Vincent O'Donnell will speak on behalf of the Stauffer Chemical Company.

\* \* \* \*

[6]

Mr. Harrison: I am afraid, if the Court please, I have been talking rather hurriedly, but I wanted to present this matter as concisely as I could. The facts that I have outlined serve to show that throughout these earlier years the plaintiffs were completely conscious of the fact that they were being injured by the precise conspiracy and the precise acts that they now allege, and that they knew the facts as fully then as they do now.

Now, Mr. Carr has offered an affidavit in reply, not questioning any of the facts that we set forth, but setting up certain new matter. Certain of the matters he set forth in his affidavit have no relation whatever to the defense of the statute of limitations, but bear only upon the merits of the case, if the merits should ever be reached; and the affidavit is upon information and belief and is not admissible.



Before these proceedings conclude, we shall move to strike out the affidavit on that ground.

But he also set forth two items of evidence which he relies upon as showing that during these proceedings we denied violation of the Anti-Trust Laws; and those two items are, in the first place, a letter to Judge Hollzer from Mr. Ashburn representing our clients, in which he said we were not monopolizing the borax trade. And in the second place, of an answer in the bankruptcy proceedings in which we denied that we were guilty of monopoly. [57]

In respect to those matters, we desire to offer at this time and by way of rebuttal, a certified copy of proceedings before the bankruptcy court in the form of an affidavit by the court reporter showing that after those papers were filed, Mr. Neblett, as the attorney for the Suckow Company, reasserted his claim and his belief, and the belief of the plaintiff company, that we had been guilty of violation of the Anti-Trust Law and were injuring these plaintiffs by our conduct in that regard; and also a petition for order to show cause in the bankruptcy proceedings made after the statements in which the same claims are represented. And finally, a letter from Mr. Neblett to Judge Hollzer reasserting the claim, showing that although the accusation was denied—and after the accusation was denied—the Suckow Company reasserted its claim that it was being damaged by a violation of the Anti-Trust Laws. We handed copies of those to Mr. Carr.

Mr. Carr: Now, these are all put in as one exhibit?

Mr. Harrison: We will offer them as one exhibit.

The Clerk: Defendant's Exhibit A.

The Court: It may be marked.

(Documents referred to above, copy of bankruptcy proceedings, petition and letter were received in evidence and marked Defendant's Exhibit A.)

[Printer's Note]: Defendant's Exhibit A is set out in full at page 573 of this Printed Record.

\* \* \* \*

[58]

The Court: I think we can go on with this case on Wednesday at 10:00 o'clock. There was a trial scheduled to go on but we learn now that it will not go, so we will take the matter up Wednesday at 10:00 o'clock, if that is agreeable with everyone.

Mr. Lasky: Yes, your Honor.

Mr. Beardsley: Will the entire day be available for that?

The Court: Yes.

(Whereupon further proceedings were continued until 10:00 o'clock a.m., Wednesday, April 7, 1948.) [63]

Wednesday, April 7, 1948, 10:00 o'clock a.m.

The Clerk: Suckow v. Borax Consolidated.

Mr. Carr: Ready.

Mr. Harrison: Ready.

Mr. Carr: At this time, may it please the Court, we desire to file an amendment to the complaint, one paragraph of the complaint, and to file a counter-affidavit of Mr. Tobeler. I would like to have the record show that copies of that have been served on counsel in Court.

Mr. Lasky: They have been served, yes. I think, then, we should have a stipulation that our motions which have been addressed to the original complaint and have been partially argued should also be deemed addressed to your complaint as amended.

Mr. Carr: That is the law and I so stipulate.

\* \* \* \*

[64]

By Mr. Lasky (on behalf of defendants):

If your Honor please, from those reasons we submit not only that the case is barred by the statute of limitations, we submit it is clearly barred by the releases, and summary judgment or dismissal should be entered on behalf of the defendants.

At this point, on behalf of all the defendants, I would like to make a motion to strike the affidavit that Mr. Carr filed here last week, the affidavit of Paul O. Tobeler in reply to motions to dismiss, and for summary judgment. This affidavit starts out stating that Mr. Tobeler is the Secretary of Suckow Company and then says:

“Affiant is informed and believes and alleges as follows—”

And then we have page after page of information and belief. Rule 56 of the Rules of Civil Procedure has this to say concerning the form of affidavits on motion for summary judgment:

“Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matter stated therein.”

This affidavit of Tobeler does not comply with that, at all. It is loaded with hearsay. It has attached to it, if your Honor please, what supports to be a document filed in Court by our clients in the bankruptcy proceedings. That is [89] Exhibit 6. We do not move to strike that document. We have checked it. We have compared it, and although it is not a certified copy, it appears to be an accurate document and we accept it. But all the other documents in this case—some we have checked and they are erroneous. For example, counsel has a letter purportedly written by Judge Ashburn to Attorney William Colby in this city, in which he says that Ashburn did not think he had a good cause of action. We have checked that letter, and Ashburn said he thought he had a very good cause of action. Words have been taken out and words substituted. We do not know whether that change was inadvertent or intentional, but it points out why we cannot accept an information and belief affidavit.

The documents that we have laid before the Court have been certified. In my own affidavit I have attached photostats of the original papers. We have the originals here in Court ready to substitute them if counsel doubts their authenticity, but this affidavit of Mr. Carr's contains these uncertified documents. We have the affidavit of Mr. Tobeler, who could not possibly know anything about what he is saying, and he has attached a lot of unverified, uncertified, documents, which he obtained God knows where.

\* \* \* \*

[90]

By Mr. Carr (on behalf of plaintiffs):

Some comment was made by Mr. Lasky as to an



erroneous insertion of a word in Mr. Tobeler's affidavit. Unfortunately we find that to be true, and that the word "very" should be "no". How that happened I do not know. During the noon hour Mr. Tobeler and Mr. Buren examined the record here in Court and found that to be true. But that, however, is of no material moment. We did not attach that affidavit for the purpose of that particular allegation, but particularly to show that they wanted to use this equity suit, their intent of using this equity suit was to worry and harass Dr. Suckow and to put him in a good frame of mind from the defendants' standpoint to be dealt with when Mr. Baker, the head of the B.C.L. in London, came here to interview him in accordance [127] with the prior arrangement. They wanted to get him softened up, as it were. That was the purpose of that particular affidavit.

I will hurry along as fast as I can. We claim that the statute was tolled here, that due to the fraud and concealment the statute was tolled, and thereby the case comes under the Holmberg case, an equity case, to which the State statute had no application whatsoever, and instead the case was to be handled upon the doctrine of laches, if there was any delay at all, and we content the plaintiffs had no knowledge of this 1929 conspiracy, and not one bit of the evidence offered under this particular motion shows any knowledge or indication that the 1929 conspiracy had been formed.

Of course, plaintiff knew what was happening to them. They knew when these people were attempting to destroy the property, the mine; they knew these



various things were happening to them. But they did not know that this was the result of this 1929 conspiracy. Every one of these overt acts, as a matter of fact, constituted a conspiracy upon which plaintiffs could sue independently had they so elected to do, but they did not so elect, and when they found that the 1929 conspiracy had actually been formed in secret here and then concealed from them, then they brought this present action, and that was their right.

\* \* \* \*

[128]

In the complaint we allege at the time these releases were made we knew nothing of the claim under the 1929 conspiracy, and had the plaintiffs known of it, they never would have made these releases. That is admitted for purposes of this motion. Those allegations among all the others of the complaint are admitted. Therefore that can have no particular moment in this matter, those releases. And furthermore, the releases are not relied on here. There is no attempt to set aside the releases. [141] The releases are charged as an overt act pursuant to the conspiracy as to getting these releases from Dr. Suckow and his associates; that was one step in the conspiracy of 1929, and when they got the one in 1934, they thought they had accomplished some purpose, but unfortunately for them the doctor still owned a half interest in very valuable properties and they went on then and it became necessary for them and the crime was to exclude them, to get that very wealthy and very important area from them by any means upon which they could lay their hands. So that was accomplished in that manner.

We do not attempt to set the releases aside in this particular proceeding. This is not an action for that purpose. This is an action to recover damages for their wrong in doing in the manner in which they did through the conspiracy of 1929. So all of these contentions made by counsel in these allegations as to these releases have no moment on this particular action because, as I said, we are not attempting to set aside those releases. We are relying on them, to the contrary, as overt acts under the general conspiracy.

\* \* \* \*

[142]

As to the affidavit of Mr. Tobeler, Mr. Lasky on behalf of all the defendants, as I understood it, made a motion to strike it out because some of it was made on information and belief and other parts presented documents which were not certified as referred to in the rule.

Mr. Lasky: Pardon me. It is all on information and belief.

Mr. Carr: No, it is not all on information and belief. That is it exactly. There are certain parts of the affidavit on information and belief.

Mr. Lasky: Look at page 1, line 32. [157]

Mr. Carr: That is right. "The affiant is informed and alleges as follows," and then it goes on naming those things which are stated on information and belief, and it goes down to and including subparagraph 8 on page 7, and then we leave that information and belief and we go on to the statement,

"That among the files and records of the action and indictment commenced and secured by the United States Government against Borax Consoli-

dated and others and referred to in paragraph 89, page 60, of the complaint herein, there is on file a copy of a letter dated March 12, 1930, from said A. W. Ashburn, of the legal firm of Newlin and Ashburn, Esqs., one of the attorneys for B.C.L. and P.C.B., addressed to Mr. William E. Colby, Mills Building, San Francisco, California; that affiant is informed and believes that the original of said letter was introduced in said proceeding and was subsequently impounded by order of the Court in which said proceedings were pending.”

That is immaterial. If counsel insists on that coming out, we are perfectly willing to take that out.

“\* \* \* But that a copy thereof now remains in said files; that a copy of said letter is hereunto annexed, marked Exhibit 3, and made a part hereof; that the ‘bill’ referred to in said Ashburn letter was the bill in equity referred to in Action No. C-107-M on page 26 of the brief on behalf of defendant B.C.L. and others filed herein in [158] support of said motion for summary judgment.”

There is no information and belief except it was introduced in evidence. We would be perfectly willing to withdraw that, and in this respect let me call your Honor’s attention at this time to these facts: When we prepared this affidavit we were advised of the particular rule. We did not believe, however, counsel would be so very technical as they are and have proven to be in so far as this is concerned because not one denial of any one of these exhibits or these allegations in this complaint has been made on this hearing. They are all matters within the knowledge of the defendant, and this is a responsive

affidavit. As said in the case of Wittlin v. Giacalone, 154 Fed. 2d. 20, from the United States Court of Appeals, District of Columbia,

“We are impelled to that conclusion because it is well established that one who moves for summary judgment has the burden of demonstrating clearly that the absence of any genuine issue of fact, and that any doubt as to the existence of such an issue is resolved against the movant. The courts are quite critical of the papers presented by the moving party, but not of the opposing papers. Indeed, Professor Moore says in his work on Federal Practice Under the New Federal Rules:

“ ‘Even if the pleading of the party opposing the motion is defective and does not state a sufficient claim [159] or defense, the motion will be denied, if the opposing papers show a genuine issue of fact.’ ”

As they do here.

Then there was the case of Dickheiser v. Pennsylvania Railroad, 5 Fed. Rules Decisions, affirmed in 155 Fed. 2d. 266, certiorari denied by the Supreme Court; on page 9 the Court said:

“Rule 56(e), 28 U.S.C.A., following Section 723 (c), provides inter alia, as follows: ‘Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matter that is stated therein.’ The rule requires that affidavits in support of a motion for summary judgment must contain evidence which would be admissible as testimony at trial. Seward v. Nissen, D.C. 2 F.R.D. 545.



There is no requirement, however, that every statement in the affidavit must meet this test. Where the affidavit includes both competent and incompetent evidence, the court should disregard the incompetent evidence but give full consideration to that which is competent. See *Banco de Espana v. Federal Reserve Bank of New York*, 2 Cir. 114 Fed. 2d. 438. This is nothing more than the procedure which would be followed at trial. The court would not strike the entire testimony of a witness merely because a [160] portion of his testimony is incompetent. The same rule is to be applied to supporting affidavits.

“Accordingly, the motion to expunge or strike the supporting affidavits is denied.”

So we say we do not as to either the Colby—

Mr. Lasky: How could Mr. Tobeler be competent to testify as to letters that passed between other parties? He is not competent to testify to a thing that appears in his affidavit.

Mr. Carr: He is competent. You have not denied it. You have admitted it. You have not denied their existence and we challenge you now to deny them. They are actual letters that have been introduced in these criminal proceedings and hence they went there.

Mr. Lasky: They were not.

Mr. Carr: They were filed in the criminal proceedings. You were very careful, I will admit, in the criminal proceedings not to get any evidence in, so your plea of *nolo contendere* would be of no moment. It could not be made. He is competent. How does anybody know of anything except that it actually exists, and you do not deny that Ashburn wrote that



letter to Mr. Colby, and it stands of record here. So he would be competent to testify to it in this particular matter under those decisions which I just read to His Honor, that is, the Colby letter, and we ask your Honor, without taking your Honor's time now, unless you desire to hear it, to refer to it. The main [161] thing that we desire to call your Honor's attention in that particular letter—we are very sorry, your Honor. I do not know how that happened, neither does Mr. Tobeler, but we are having a certified copy of that letter that was filed in that criminal proceeding made, and we would ask that that be substituted, a certified copy, in place of the letter which appears in the affidavit. This is the part we were after:

“Mr. Baker and Mr. Zabriskie will be in San Francisco on one of their customary visits about the first of April. Mr. Baker has it in mind to have a conference of some kind with Suckow at that time and it seems to me that if we should file our suit and have our application for the temporary injunction so noticed that it would be returnable a few days after Mr. Baker's arrival, the stage would be very nicely set for an advantageous conference.”

This is not on information and belief:

“That on pages 26 to 35 of said brief of defendant Borax Consolidated, Ltd., et al., reference is made to an action in the District Court for the Southern District of California commonly known as the ‘equity action’ and numbered C-107-M. Many quotations appear in such brief from various pleadings in said action filed herein by said Suckow and said Suckow Company in which defendant Borax Consolidated

and others were charged with forming a conspiracy and combination to ruin said Suckow. [162]

“That in said action and under date of January 31, 1934, A. W. Ashburn of the firm of Newlin and Ashburn, Esqs., Attorneys-at-Law in Los Angeles, California, and representing said Borax Consolidated, Ltd., in said action addressed a letter to The Hon. Harry A. Hollzer, Judge of the United States District Court, Federal Building, Los Angeles, California, a copy of which is hereunto annexed, marked Exhibit 4, and made a part hereof. Affiant requests that this court note that in the second paragraph of such letter, said Ashburn denies that plaintiff therein is a monopoly in any sense of the word, and then goes on to state that defendant American Potash and Chemical Company is a competitor of said plaintiff. As a matter of fact, said American Potash and Chemical Company was at said time and ever since said agreement of 1929 a party to said agreement of 1929 and all continuing agreements thereof; every effort is made in said letter to place upon said American Potash and Chemical Company the onus of price cuts and competition.”

That letter is also uncertified, your Honor, and I would like to plead here that if counsel still insists on this certification or their motion in so far as this is concerned, that we be given permission to secure a certified copy of that letter and file herewith in the place and stead of this one here. [163]

Mr. Lasky: Is that the letter to Judge Hollzer that you are referring to?

Mr. Carr: Yes.

Mr. Lasky: This morning I made a statement

about a copy of a pleading that you have in there. I said we would not insist on that being certified. We will say the same about this letter to Judge Hollzer.

Mr. Carr: Then you will not require certification?

Mr. Lasky: Not of this particular document.

Mr. Carr: You will allow this letter from Ashburn to Judge Hollzer to stand? You won't insist on your motion so far as that letter is concerned?

Mr. Lasky: So far as that letter is concerned, no.

Mr. Carr: This is not either on information and belief:

"That on page 35, subdivision (6) of said brief on behalf of said British defendants, reference is made to the Senate investigating committee, and on page 37 it is stated that Senator Hebert read a statement by Thomas McManus, first receiver in bankruptcy of the Suckow Company, quoting various portions of said report; that a full copy of said report was hereunto annexed, marked Exhibit 5, and made a part hereof, and from which it will be seen that said Thomas McManus in stating his belief that a conspiracy had been formed by certain of the defendants referred to the conspiracy to institute and carry on said bankruptcy proceeding; [164] it will also be noted that no reference of any kind whatsoever to the 1929 conspiracy was made by Mr. McManus."

Will you stipulate as to that, or rather, would you withdraw your objection as to that, inasmuch as you know whether it is true or not? If you do not stipu-

late, we will ask that the Court be kind enough to give us an opportunity to produce a certified copy in lieu of this.

Mr. Lasky: We do not know anything about that.

Mr. Carr: You have copies of that McManus report. You refer to it in your brief and made mention of it in support of your general statement that we knew of your conspiracies and wickedness.

Mr. Lasky: We quote portions that were read into the Senate committee's transcript.

Mr. Carr: We will submit that to the Court, and if the Court decides you are right in that situation, we will respectfully ask the Court to give us the opportunity to reply as provided in Rule 36. We could even take depositions on Rule 36. What do you want to do? You know whether that McManus report is right or not and yet you insist on certified copies.

Mr. O'Donnell: The difficulty is a lot of it is here-say. It befogs the issue.

Mr. Carr: The difficulty is you have all raised it and quoted from this same report. [165]

Mr. Lasky: Counsel, that report was not filed. We know nothing about it. What we brought before the Court were statements made by Suckow and Suckow's attorney.

Mr. Carr: You quote in your brief a statement by Mr. McManus.

Mr. Lasky: In the presence of Mr. Buren and Suckow.

Mr. Carr: Yes, but you state he made it and you must know all about it. Why be technical about the thing?

Mr. Harrison: This is not part of the Senate investigating committee report.



Mr. Lasky: Not the report, no.

Mr. Carr: To rely on that matter you must bring in all the Senate investigating committee report. You can't pick out what you want and not produce the whole.

Mr. Harrison: We offer the full report of the Senate investigating committee.

Mr. Carr: I do not think it is a full report, Mr. Harrison, so far as I can find out. It may be, but so far as I can find out, there was so much of this, for example, on page 36,

“Mr. Laugharn, trustee in bankruptcy of the Suckow Company, stated that Borax Consolidated, Ltd., and Pacific Coast Borax Company were a monopoly. Senator Hebert read a statement by Thomas McManus, first receiver in bankruptcy of the Suckow Company, that the Pacific Coast Borax Company had launched a campaign of persecution against [166] Suckow and dragged him through bankruptcy, and that:

“‘As an indication of the length to which the Pacific Company was prepared to go in its determination to throttle and kill all competition,’”—this is McManus’ testimony which they are quoting—“‘the author of this report was informed by Mr. Jenifer, vice-president and general manager of the Pacific Company, that this concern had offered Dr. Suckow an independent income for life on the condition that he would not attempt to develop the borax lands in which he owns a one-half undivided interest.’

“Thomas McManus, under questioning by Mr. Neblett, testified”—and you quoted. Now, all I want



from you, Mr. Lasky, and also I presume Mr. Harrison, is a statement of whether you are going to insist that we get this McManus report certified.

Mr. Lasky: Where are you going to get it certified?

Mr. Carr: It is filed with the Senate committee.

Mr. Harrison: We obtained a certified copy of the full proceedings. That is one of the exhibits in Mr. Lasky's affidavit. We did not find that, Mr. Carr. I do not know where you obtained that.

Mr. Carr: It is out of your brief.

Mr. Harrison: That, but not what you have in your affidavit.

Mr. Carr: Certainly. [167]

Mr. Harrison: If you will examine the transcript of the hearings of the investigating committee which we have put in evidence, you will find that that report was not admitted in evidence before the committee. All that we know about it is what appears from the testimony that is before this Court.

Mr. Carr: Yes, but you quoted. If you quote part of it, you have to quote the whole.

Mr. Harrison: Mr. Carr, if you wished the whole of which we had offered part, you would be quite right. But we have offered the full proceedings of the committee certified. If you have any proceedings of the committee certified, it is your privilege to offer them.

Mr. Carr: No, we haven't, but we will get this one. Am I correct in that, Mr. Tobeler?

Mr. Tobeler: I am under the impression that this is from the record of the Senate committee.

Mr. Buren: I was present and heard, but I don't

remember that that particular report was filed with the committee.

Mr. Carr: If you insist, we will endeavor to secure, provided your Honor will permit us to do so, a certified copy and substitute it for this copy which is attached here.

Mr. Lasky: Counsel, is the Mr. Buren who just spoke the Mr. Buren who is referred to in our brief as the secretary and attorney of the Suckow Company?

Mr. Carr: Yes. [168]

Mr. Lasky: So his statement now that he was present at the Senate committee and heard all these things is the statement of that Mr. Buren?

Mr. Carr: Yes.

Mr. Lasky: Fine. I would like the record to show that.

Mr. Carr: And he said he does not know whether it was filed in the Senate committee or not, but we ask your Honor if counsel insist on it, that we be given an opportunity to endeavor to present a certified copy of that.

The Court: I do not want to preclude you from further time. It is now 4:30. If you want further time, you can have it. When does the calendar permit this matter to be heard again?

The Clerk: We have trials for the rest of the week and next week. This was just an accident that today was open.

The Court: What is on Monday afternoon?

The Clerk: Just the law and motion calendar.

The Court: I will give them Monday afternoon.

Mr. Carr: Thank you, your Honor. You are very kind.

The Court: Maybe this will be helpful. An action in Judge Goodman's Court was referred to. I know nothing about it at all. I know nothing of what took place. I will have counsel on both sides advise the Court just what happened.

Mr. Harrison: The same counsel appeared in that case.

The Court: You may outline it, and then if there is any [169] additional matter you want to call to the Court's attention, you may do so. The thing I have in mind is the statute of limitations, and it may or may not become an important or vital question in this case. I just want to know about it for my own information.

Mr. Carr: It is a different question.

Mr. Harrison: We consider it is the same.

Mr. Carr: I haven't any of my papers concerning that matter.

Mr. Harrison: Do you want that now or Monday?

The Court: I thought if I gave you my state of mind on these matters it would be helpful.

Mr. Carr: We appreciate that. Do you wish to hear that now or Monday?

The Court: Any time you wish.

Mr. Carr: I would rather have it Monday.

The Court: Monday at 2:00 o'clock.

Mr. Harrison: Yes, your Honor. We would like to ask your Honor at that time for an opportunity to reply in writing to counsel's last brief, which only came in a few days before the last hearing.

The Court: Certainly, but I am sure you will be able to do that without difficulty.

Mr. Lasky: May I call the Court's attention to the fact that the Senate investigating transcript we are putting in the [170] record shows that the document counsel has been talking about was not received in the record. It is not part of the Senate committee proceedings, Col. Neblett saying, "We can not let that go into the record. It is too wrong." So the document he is talking about was never made part of that record.

The Court: I think between now and 2:00 o'clock Monday you may be able to persuade counsel of your position. Of course, if it did not go in, we are not concerned with it.

Mr. Carr: Except the reference made to the brief.

The Court: I understand. Monday at 2:00.

(Thereupon an adjournment was taken until Monday, April 12, 1948, at 2:00 o'clock p.m.)

Tuesday, April 13, 1948, 10:00 o'clock a.m.

The Clerk: Suckow vs. Borax Consolidated.

Mr. Carr: Ready.

Mr. Harrison: Ready.

Mr. Carr: May it please your Honor, at this time I would like to present Mr. Frank Buren, a member of the bar of California, and a resident of Los Angeles, who will become associated with me in this case from now on, and I would like to ask his admission into this court for the purpose of this trial.

The Court: You may be sworn.

(Mr. Frank Buren was sworn.) [172]



Mr. Carr: I will hurry along, your Honor. When we adjourned the other afternoon we were discussing the affidavit of Mr. Tobeler, and some of that affidavit is on information and belief, and, counsel, I would like to ask, do you intend to urge those objections to strike? [181]

Mr. Harrison: We do, except as to those matters which are matters of court record. We do not intend to urge it to papers filed in court, Mr. Carr. Otherwise, we do.

Mr. Carr: The next one in this affidavit is the reference to the equity case. That is filed in court and there is no objection to that.

The next one alleged in Mr. Tobeler's affidavit is the McManus report.

Then the next one is the answer of defendant Borax Consolidated, a copy of which is attached. Now, do you insist upon the certification of those?

Mr. Harrison: Not that answer. No paper filed in court, Mr. Carr.

Mr. Carr: Page 9:

"That affiant is informed and believes and therefore alleges as to a telegram sent——"

We seek permission to withdraw the words "is informed and believes."

Mr. Harrison: What is that?

Mr. Carr: We ask leave to amend the affidavit by withdrawing the words on line 27, page 9: "That

affiant is informed and believes," and so it will read, "That therefore."

Mr. Harrison: We submit, if the Court please, that a person's affidavit cannot be amended to strike out that he is informed and believes to make it a positive affidavit. [182]

Mr. Carr: Why not?

Mr. Harrison: A person making oath as to a document——

The Court: If he made an affidavit, he is entitled to it as is, the whole affidavit. It is not for me to put any construction on it, at this time at least.

Mr. Carr: If there is any objection to that exhibit 7, which is the cablegram——

Mr. Harrison: Yes.

Mr. Carr: Then if you object to these various things we are going to ask upon the conclusion of this hearing for an order permitting us to take the depositions to prove these particular things that you object to.

Mr. Harrison: Well, we will be heard on that motion.

Mr. Carr: The next one is Exhibit 9, which is a telegram from Mr. Gurney Newlin, a partner of Mr. Ashburn, to Mr. Baker, Managing Director of the BCL.

Mr. Harrison: We object to that.

Mr. Carr: We then will make reference to those

in our motion. We will take the deposition of Mr. Newlin and have him produce the wire and also the Gerstley letters.

Mr. Harrison: We object to that on the ground it is immaterial.

Mr. Carr: We will ask to take the deposition of Gerstley. We do not care about that next one. This one under date of May 5, Exhibit 13, is not on information and belief. [183]

“Affiant is informed and believes that Emden should be paid the sum of \$10,000.”

We will withdraw for whatever it is worth, “is informed and believes and therefore alleges.”

Mr. Harrison: Are you turning that into a positive affidavit?

Mr. Carr: Yes.

Mr. Harrison: We will object to that, if the Court please.

Mr. Carr: We will ask his Honor to rule on that.

The next one refers to the indictment here in court:

“Is informed and believes and therefore alleges——”

Mr. Harrison: You are not asking the court to consider that?

Mr. Carr: No, that is out. We will withdraw that.

Now, as to the affidavit of Rasor in the equity

case, only a part of his affidavit is attached, and, of course, you are legally under those authorities which were cited entitled to the whole affidavit if you want, but you have it all in your possession.

Mr. Harrison: If you will produce that affidavit.

Mr. Carr: The original?

Mr. Harrison: Or a copy of it.

Mr. Carr: All right.

Mr. Harrison: We won't make any question about anything that was filed in court. [184]

Mr. Carr: I think we have that already. I have it, I think, in the file. You want a copy?

Mr. Harrison: Yes.

Mr. Carr: But you have a copy of it in your file.

Mr. Harrison: We may have, if you will tell me where it is.

Mr. Carr: As to the West End, we would like to withdraw on page 14, strike out from our affidavit, line 2, the words, "Is informed and believes and therefore alleges."

Mr. Reith: We join in the same objection.

Mr. Carr: The next one is Exhibit 14. That is on positive information.

Exhibit 16 you would object to?

Mr. Harrison: Yes.

Mr. Carr: That is that telegram.

The Court: Does it follow, then? What are we doing here? The motion to strike will be granted?

Mr. Harrison: Counsel is asking if we agree that any of these things will go in. We said we would not agree unless they were a part of court proceedings, and we are objecting to affidavits on



information and belief as to which the party has no personal knowledge.

The Court: He answered that by saying he will take the deposition.

Mr. Harrison: We would like to be heard on that, if the [185] court please.

Mr. Carr: At the conclusion of this and in due course we will make a regular motion for that to be heard. The same applies that applies to the other. That covers the affidavit and put us in a position where we know.

At this time we would like to file certified copy of the letter to Colby.

Mr. Harrison: What?

Mr. Carr: A certified copy. You will remember that was the one in which it was discovered that there was one wrong word.

Mr. Harrison: Yes, of course, if the Court please, the certified copy does not prove the letter. I do not think it adds anything. I mean that only because counsel seems to think, and he may urge it with respect to other papers, because a document has been impounded with the grand jury, that a certified copy is proof of the execution of a document. All the certification shows is that a document is on file with the clerk. As far as this letter is concerned, if the court please, I am not going to make any objection as to form. This is a letter between Mr. Ashburn and Mr. Colby. We do object to it on the ground it is immaterial and we will discuss that in our argument. [186]

The Court: You say you were secretary?

Mr. Buren: I was secretary of the Suckow Corporation. I was Dr. Suckow's personal attorney, and I also appeared as attorney for the Suckow Corporation. [194]

\* \* \* \*

The Court: I think with the consent of everybody with relation to this litigation it would be well to wait until we have the final determination of the Circuit Court in the Burnham case; wouldn't that be helpful? What is your thought on that? [229]

\* \* \* \*

Mr. Carr: I ask leave to file within ten days a memorandum on such questions of law.

The Court: And ten days to answer?

Mr. Harrison: We will have ten days to reply.

The Court: That will bring us to where?

The Clerk: May 5 on the calendar for submission.

The Court: May 5 on the calendar. [230]

Mr. Beardsley: Should we appear on May 5?

The Court: No, if all the briefs are in, the matter will stand submitted.

Mr. Carr: Thank you, Your Honor, for giving us all this time and inconveniencing Your Honor. You have been very courteous and kind and I am sure I speak for all counsel.

Mr. Harrison: Yes, indeed, Your Honor.

The Court: I hope you are all as satisfied when this case is disposed of as you are this morning.

# CERTIFICATE OF REPORTER

I, J. J. Sweeney, Official Reporter, certify that the foregoing 59 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

/s/ J. J. SWEENEY.

[Endorsed]: Filed Apr. 13, 1948. [231]

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[Endorsed]: No. 12158. United States Court of Appeals for the Ninth Circuit. Suckow Borax Mines Consolidated, Inc., a corporation, Mojave Borax Company, Ltd., a corporation, Paul O. Tobeler, Executor of the Last Will and Testament of John K. Suckow, Deceased, and Ruth E. Suckow, Appellants, vs. Borax Consolidated, Ltd., Pacific Coast Borax Company, United States Borax Company, American Potash & Chemical Corporation, Stauffer Chemical Company, West End Chemical Company, Western Borax Company, Ltd., Goldfields American Development Company, Pacific Alkali Company, F. Lesser, James M. Gerstley, Frank M. Jenifer, P. C. Baker, Allen W. Ashburn, Walter A. Moses, Bank of America National Trust and Savings Association as Executor of the Last Will and Testament of Clarence McAnisse Rasor, deceased, Ben H. Brown, as Special Administrator of the Estate of Victor C. Emden, Deceased, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed January 18, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 12,158

SUCKOW BORAX MINES CONSOLIDATED,  
INC., a corporation, et al.,

Appellants,

vs.

BORAX CONSOLIDATED, LTD., a corporation,  
et al.,

Appellees.

STATEMENT OF POINTS TO BE RELIED  
UPON BY APPELLANTS AND DESIGNA-  
TION OF PARTS OF RECORD TO BE  
PRINTED.

Appellants adopt as the statement of points upon which they intend to rely upon this Appeal, the Statement of Points filed by them in the above-entitled action in the United States District Court for the Northern District of California, Southern Division, upon December 21, 1948, and in addition thereto designate the following points:

10. All statutes of limitation urged by appellees herein were tolled by the Act of the 77th Congress, 2nd Session, Chapter 589, 56 Stat. 781 and adopted upon October 10, 1942, and which Act was subsequently and upon the 30th day of July, 1945, extended to the 30th day of July, 1946.

11. That if the said Moratorium Act referred to hereinabove did not apply to all of the damages

claimed and to the overt acts of appellees, all as alleged in the complaint on file herein, it did apply to the overt acts surrounding the sale of December, 1942, referred to in the complaint on file herein.

And appellants designate that there be printed the following parts of the Record now on file herein, to-wit:

Complaint.

First Amendment to Complaint.

Second Amendment to Complaint.

Affidavit of Paul O. Tobeler and 17 Exhibits.

Affidavit of Frank Buren in Opposition to Motion to Dismiss.

Supplemental Affidavit of Frank Buren in Opposition to Motions to Dismiss.

Memorandum Opinion.

Notice of Motion to Alter or Amend Judgment of Dismissal Heretofore Entered Herein upon November 22, 1948.

Order Denying Motion to Amend or Alter Judgment.

Judgment.

Notice of Appeal.

Cost Bond on Appeal.

Statement of Points Upon Which Appellants Intend to Rely on Appeal.



Designation by Appellants of Contents of Record on Appeal.

This Statement of Points and Designation.

/s/ THURMAN ARNOLD,

/s/ STERLING CARR,

Attorneys for Appellants.

(Affidavit of Service by Mail attached.)

(Acknowledgment of Service.)

[Endorsed]: Filed January 26, 1949. Paul P. O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

Counter-Designation of Appellee West End Chemical Company, a Corporation, of Parts of Record to be Printed.

Appellee, West End Chemical Company, a corporation, hereby designates the following parts of the record to be printed, in addition to parts designated by other parties:

1. Notice of motions of defendant West End Chemical Company, a corporation, to dismiss for failure to state a claim upon which relief may be granted, to dismiss because the action is barred by the Statute of Limitations, for a summary judgment, and to strike.

2. This Counter-Designation.

Dated: January 27, 1949.

/s/ JOHN L. REITH,

Attorney for Appellee West End Chemical Company, a corporation.

[Endorsed]: Filed January 28, 1949. Paul P. O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

Designation by Appellees Borax Consolidated, Ltd., Pacific Coast Borax Company, United States Borax Company, James M. Gerstley, Frank M. Jenifer, Bank of America N.T.&S.A., etc., and American Potash & Chemical Corporation of Additional Parts of Record Deemed to be Material

Appellees Borax Consolidated, Ltd., Pacific Coast Borax Company, United States Borax Company, James M. Gerstley, Frank M. Jenifer, Bank of America National Trust & Savings Association as Executor of the Last Will and Testament of Clarence McAniffe Rasor, Deceased, and American Potash & Chemical Corporation hereby designate the following portions of the record which they deem material to the consideration of the appeal and which they request to be printed, in addition to portions designated by appellants:

1. Notice of motions of defendants Pacific Coast Borax Company, Borax Consolidated, Ltd., United States Borax Company, Frank M. Jenifer and James

M. Gerstley to dismiss for failure to state a claim upon which relief may be granted, to dismiss because the action is barred by the statute of limitations, for a summary judgment, and to strike;

2. Notice of motions of Bank of America National Trust & Savings Association as Executor of the Last Will and Testament of Clarence McAniffe Rasor, Deceased, to quash service of summons and to dismiss for improper venue, to dismiss for failure to state a claim upon which relief may be granted, to dismiss because the action is barred by the statute of limitations, and to strike;

3. Notice of motions of defendant American Potash & Chemical Corporation to dismiss the complaint, for summary judgment, and to strike parts of the complaint;

4. The order of dismissal entered herein on or about the 22nd of November, 1948;

5. The judgment entered herein on or about the 20th of December, 1948;

6. Affidavit of Moses Lasky in support of motions of defendants Borax Consolidated, Ltd., Pacific Coast Borax Company, United States Borax Company, James M. Gerstley, Frank M. Jenifer and Bank of America National Trust & Savings Association as Executor of the Last Will and Testament of Clarence McAniffe Rasor to dismiss for failure to state a claim upon which relief may be granted, to dismiss because the action is barred by the statute of limitations, for a summary judgment, and to strike, together with Exhibits 1 to 15, inclusive, referred to in, part of, and filed with said affidavit but not including the following:

(a) In Exhibit 1 referred to in said affidavit there may be omitted the paragraphs numbered I, II, III, and paragraph V, and paragraphs VII, VIII, IX and X.

(b) In Exhibit 4 referred to in said affidavit there may be omitted the pages numbered 1, 2, the last 6 lines on page 3, the first 16 lines on page 4, the page numbered 927, the last 7 lines on the page numbered 949, the first 18 lines on the page numbered 950, the pages numbered 963, 964, the last 13 lines on page 965, all but lines 4 to 9, inclusive, on page 966, all but the last 10 lines on page 967, and the pages numbered 1011, 1012, 1013 and 1014.

(c) In Exhibit 7 referred to in said affidavit there may be omitted the paragraphs numbered I to XVI, inclusive, appearing on pages 1 to 11 of said exhibit, and there may also be omitted all of the paragraphs numbered I and II of the so-called Third and Separate Defense therein appearing at pages 19 and 20 of said exhibit.

(d) In Exhibit 11 referred to in said affidavit there may be omitted the documents attached to said exhibit and marked Exhibits F and G thereof, since said documents are forms of releases which were later executed and of which executed releases Exhibits 8, 9 and 10 attached to said affidavit of Moses Lasky are copies.

7. Affidavit of Allen W. Ashburn filed herein on February 2, 1948, together with the attached copies of a certain "Affidavit of John K. Suckow";

8. Affidavit of Albert H. Bargion;

9. Defendants' Exhibit A received in evidence on April 3, 1948 in support of defendants' motions to dismiss and for summary judgment, and all parts thereof;

10. The following portions of the Reporter's Transcript:

(a) Pages 1 and 2; page 3 through the word "venue" in line 19; page 5, line 4, to page 6, line 4;

(b) Page 57 and page 58 to and including line 23;

(c) Page 63, lines 3-13, inclusive;

(d) Page 64, lines 1-16, inclusive;

(e) Page 89, line 1, to page 90, line 20, with identification of these remarks as having been made by Mr. Lasky on behalf of defendants;

(f) Page 127, line 13, to page 128, line 24; page 141, line 18, to page 142, line 19; page 157, lines 15-19, with identification of all the foregoing remarks as having been made by Mr. Carr on behalf of plaintiff;

(g) Page 157, line 20, through page 171;

(h) Page 172, lines 1-13, inclusive;

(i) Page 181, line 21, to page 186, line 23;

(j) Page 194, lines 16-19, inclusive;

(k) Page 229, lines 9-13, inclusive;

(l) Page 230, line 19, through page 231.

11. Counter-designation of appellees Borax Consolidated, Ltd., et al. of contents of record on appeal filed on December 29, 1948;

12. This designation.



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[Endorsed]: Filed February 2, 1949. Paul P.  
O'Brien, Clerk.